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CONTENTS

CURRENT TOPICS

Mortmain Unmourned

THE Charities Act, 1960, is one of the most important of the fifty-five statutes which received the Royal Assent on 29th July. Although it will not come into operation generally until the new year, and, even then, not so as to require the registration of existing charities, the Act operated immediately upon its passing to abrogate the law of mortmain together with the restrictions upon charitable gifts (whether by will or *inter vivos*) of land, and of personalty to be laid out in the purchase of land. Thus s. 38 of the Act repeals the Mortmain and Charitable Uses Acts of 1888 and 1891, and the Mortmain and Charitable Uses Act Amendment Act, 1892, together with all related enactments, of which perhaps the most important are s. 29 (4) of the Settled Land Act, 1925, s. 87 of the Education Act, 1944, and ss. 14 and 408 of the Companies Act, 1948. Accordingly, it will no longer be necessary for assurances of land, or of personalty to be laid out in the purchase of land, for charitable purposes to be sent to the Charity Commissioners or the Minister of Education to be recorded. Nor will it be necessary for charitable and other similar companies to obtain a licence of the Board of Trade before they can hold more than two acres of land, nor for any other corporation to apply to the Home Office for a Royal licence in mortmain. Where land has in the past been conveyed in mortmain without a licence or otherwise in breach of the provisions repealed, or the conveyance has not been recorded as it should have been, s. 38 (2) validates the title of the ostensible owner of the land at the passing of the Act, saving, of course, any pending claims and any rights acquired by adverse possession, as for example those acquired by the charity against the donor in *Churcher* v. *Martin* (1889), 42 Ch. D. 312. Where, under the will of a person who died before the passing of the Act, there was a direction to lay out personalty in the purchase of land for charitable purposes, that obligation, abrogated by s. 7 of the 1891 Act, will not be revived by this Act, and an order sanctioning the acquisition may still be sought by virtue of s. 38 (3). Land devised for charitable purposes before the passing of the Act and not yet sold may now be retained without the necessity of an order of the court, Charity Commissioners, or Ministry of Education.

Alimony and Assistance

SECTION 19 (1) of the Matrimonial Causes Act, 1950, provides that on any petition for divorce or nullity of marriage, the court may make such interim orders for the payment of alimony to the wife as the court thinks just. In other words,

the right to alimony *pendente lite* is discretionary, but in *Sterne* v. *Sterne* [1957] P. 168, a wife petitioner complained that WALLINGTON, J., had erred in holding that the receipt by her of national assistance benefit was income which should be taken into account when deciding whether and in what amount her husband should be ordered to pay alimony *pendente lite*. It seems that the wife was in receipt of national assistance in the sum of £2 5s. 6d. per week and that until the institution of proceedings for divorce she had made no claim on her husband for support. The Court of Appeal affirmed that the payments which the wife received from the National Assistance Board constituted a means of support independent of her husband and that the court, in exercise of the discretion conferred by s. 19 (1) of the 1950 Act, was entitled to say that this was not a case in which an order should be made in favour of the wife. However, the court is not obliged to take into account the fact that the wife is receiving national assistance. In *Slater* v. *Slater* (1960), *The Times*, 21st July, a husband appealed from an order of MARSHALL, J., which awarded to the wife alimony *pendente lite* at the weekly rate of £2 5s. 0d., on the ground that his lordship should have taken into account the national assistance benefit of £2 19s. 0d. per week received by the wife, who had no resources apart from £36 in a savings account. The Court of Appeal (HODSON, PEARCE and UPJOHN, L.JJ.) refused to interfere. Indeed, without wishing to say anything that could be taken as fettering the court's wide discretion in this matter, Pearce, L.J., said that the cases in which national assistance benefit received by a wife would be taken into account were likely to be the exception and not the rule.

Turn of the Screw

THE Board of Trade have recently taken more rigorous action in order to enforce those provisions of the Companies Act, 1948, which require officers of companies to furnish returns, accounts, notices, etc., to the Registrar of Companies. Formerly it was the Board's practice to prosecute in magistrates' courts officers of companies, liquidators and receivers who failed to file returns but it was found in some cases that, although defaulters were prosecuted and fined several times for the same offence, the defaults were still not remedied. On 25th July, in the case of *Re George Dowman, Ltd.* (1960), *The Times*, 26th July, BUCKLEY, J., granted to the Registrar of Companies leave to issue a writ for the attachment of a director of George Dowman, Ltd., for contempt in failing to comply within fourteen days with an order made by the Registrar on 25th May, 1960, to deliver copies of the annual returns of the company for the years 1957, 1958 and 1959, pursuant to s. 126 of the 1948 Act. The court also ordered that a writ for sequestration of the company's property be issued.

Insurance Agents as Claimants

INSURANCE agents inevitably spend a lot of their working time on the streets. Their position for purposes of industrial injury benefit claims if they suffer injury from a street accident has twice recently been considered by the Commissioner. In decision No. R (I) 13/60, an insurance agent, whilst walking from house to house collecting premiums, was hit and injured by a running dog. The Commissioner had to make two rulings before he concluded that the accident arose out of and in the course of the claimant's employment. The first was that the case came within the principle laid down in *Dennis* v. *A. J. White and Co.* [1917] A.C. 479 (H.L.), where in his speech Lord Finlay, L.C., said: "If a servant in the course of his master's business has to pass along the public street, whether it be on foot or on a bicycle, or on an omnibus or car, and he sustains an accident by reason of the risks incidental to the streets, the accident arises out of as well as in the course of his employment." Secondly, the Commissioner decided that the risk of collision with a dog is one of the risks incidental to the streets; in support of this view he mentioned a reference to domestic animals in the Highway Code and that s. 15 of the Road Traffic Act, 1956, empowered local authorities to make orders for the control of dogs on certain highways. In the other case, No. R (I) 15/60, as a result of falling off her bicycle, a part-time relief insurance agent was injured when travelling direct from her home to her collecting area. With her employers' approval she made up her cash at home whence she operated and was paid travelling expenses; she had no fixed hours of work and had either to carry the money she collected to her home or deliver it at the end of the day to her employers or the agent for whom she was collecting. In the light of these factors the Commissioner considered that, while travelling for the purposes of her work from her home, she was in the course of her employment until she returned home, except during any period during which she had deviated during the day for her own purposes, just as she would have been if she had travelled in a like manner from and to her employers' office. Accordingly, he held that her accident was an industrial accident and, accordingly, allowed her appeal.

Presumption of Authority

IT is well established that where a wife lives with her husband and has the management of the household, there is a presumption that she has authority to pledge his credit for such things as are necessary in the ordinary course of such management, but where a wife is separated from her husband, she has, prima facie, no such authority: see Bowstead on Agency, 12th ed., p. 23. These principles were applied in a recent case in the West London County Court in which it appeared that a wife had bought some clothes for herself and her son in a well-known London store. The husband agreed to meet the cost of the clothes purchased for his son, but denied liability in respect of the clothes bought for his wife's own use on the ground that he had not authorised the purchase and that at the time at which they were bought his marriage had "broken up." His Honour Judge GEOFFREY HOWARD held that the store was entitled to recover from the husband the cost of all clothes purchased by the wife because, at the time at which the contract for the purchase of the goods was concluded, the husband and wife were not separated within the meaning of the law and the purchases were "reasonable." Of course, even where a husband and wife are living apart, until such time as the wife is able to obtain a decree of maintenance from the court, she has authority at common law to pledge her husband's credit for necessaries suitable to her station in life if it is shown that she was compelled to live apart from him (see, e.g., *Houliston* v. *Smyth* (1825), 3 Bing. 127) and did not have means of her own which were reasonably adequate for her support (*Biberfeld* v. *Berens* [1952] 2 Q.B. 770).

THE ASSESSMENT OF DAMAGES FOR LOSS OF EARNINGS

THE recent case of *Judd* v. *Hammersmith, West London and St. Mark's Hospitals Board of Governors* [1960] 1 W.L.R. 328; p. 270, *ante*, settles rather a novel point on the assessment of damages for the loss of earnings. This point, however, could be of some practical importance. The law, hitherto, had been in rather an ambiguous state when a court was called upon to determine whether a pension which the injured party had become entitled to receive should be taken into account in assessing such damages.

The essential facts of the case are that the plaintiff was injured in an accident which was caused by the defendants' negligence. As a result of the injuries the plaintiff had to give up his work as a local government officer before he would have been, in the normal course of events, required to do so. During his period of service for the Hammersmith Borough Council he had contributed to a compulsory superannuation fund. On his retirement, the plaintiff received a pension of £300 per annum. This pension was based upon the number of years' service he had given to the council. The defendants contended that the pension should be taken into account in assessing damages for loss of earnings. Finnemore, J., however, decided that the pension should not be taken into account as the contributions had been compulsorily made during the plaintiff's period of service and this entitled him to the pension he was now enjoying and further—this seems to be the most important point—that the *causa causans* of the pension was the service of the plaintiff and his payments to the scheme and not the accident itself.

Consideration of authorities

In order to appreciate this decision the authorities upon which the learned judge relied must be considered. Before the present case the position was not entirely clear. The authorities did not answer such questions as whether it was relevant that the contributions were compulsory and whether or not the discretionary nature of the pension was a fact to be taken into account. No clear legal principles could be gathered from the existing authorities but now, it is submitted, the reasoning of Finnemore, J., does much to clarify the position.

The learned judge was much influenced by the decision of the Court of Appeal in the case of *Payne* v. *Railway Executive* [1952] 1 K.B. 26, concerned with a plaintiff who was a sailor in the Royal Navy and who was injured in a railway accident. The defendants admitted liability and the only matter in issue was whether the pension awarded to the plaintiff when he was invalided out of the Navy as a result of the accident should be taken into account in assessing damages. One most important fact which emerged from the evidence in this case was that the Ministry of Pensions had the power to vary the amount of the pension if damages should be awarded for loss of earnings. Sellers, J., at first instance held that the pension should not be taken into account and this decision was subsequently affirmed by the Court of Appeal. This case should be carefully compared with that of *Judd*. In the latter case the plaintiff made contributions to his pension and in the case of *Payne* the amount of the pension could be varied by the Ministry. The cases, therefore, are similar without being on all fours.

Court's reasoning in *Payne* v. *Railway Executive*

The reasons given in the Court of Appeal for the decision in *Payne's* case are worthy of a close study. Cohen, L.J., after discussing several cases concerning fatal accidents, came to the conclusion that the pension should not be taken into account because the cause of the pension was not the accident but the service in the Royal Navy. He said (at p. 36):—

> "It seems to me that the accident in this case was not the *causa causans* of the receipt . . . of the disability pension, but the *causa sine qua non*. The *causa causans* was his service in the Royal Navy."

Cohen, L.J., gave another reason for his decision. He said that the plaintiff would be suffering from a double deduction had the pension been taken into account because the Ministry of Pensions had this power of varying the amount if damages were awarded. This judgment can be so read, however, that the true *ratio decidendi* which emerges is the former reason. This is in effect a test of causation which seems to be eminently sensible as it would surely be unjust if pensions of this description were taken into account when they had been earned either by service or by contribution. It would be a matter of chance as to how much the defendant would have to pay, dependent upon whether the plaintiff was entitled to such a pension or not. Another satisfactory outcome of such an interpretation of this judgment is that it would give the courts a working principle to guide them in their deliberations. There are so many difficulties attached to the assessment of damages in general that any such principle in this field must be welcome.

The judgment of Singleton, L.J., was very similar to that of Cohen, L.J. The learned lord justice said (at pp. 39–40):—

> "In certain circumstances a man serving in the Navy may become entitled to a pension; that is a factor which enters into the question of his pay; if there were no pension rights it is reasonable to assume that the pay would be higher. Why then should the pension enure for the benefit of a wrongdoer? I, myself, should be prepared to adopt the reasoning of Pigott, B., and to hold that the plaintiff does not receive the pension because of the accident 'but because he has made a contract providing for the contingency.' None the less, I prefer to base my judgment in this case on another ground."

This other ground upon which the learned judge based his judgment was the fact that the Ministry of Pensions had the power to vary the amount of the pension in order to take into account the damages recoverable. The defendants could not be heard to say, "Reduce the damages because of the pension," as the Order in Council under which the pension was awarded allowed such a discretion to the Ministry.

As can be seen, Singleton, L.J., preferred to base his judgment on the narrower issue of the Minister's discretion, but nevertheless it is submitted that the judgments of the two judges cited are wide enough to allow a much more important principle to be extracted. The two judgments are very important in that Cohen, L.J., preferred a test of causation whereas the wider reasoning of Singleton, L.J., implies that he preferred the reasoning in earlier cases that the test was one of the contractual rights earned by the injured party. It will be seen later that this type of reasoning has been disputed by the House of Lords. There is no doubt that Finnemore, J., in *Judd's* case based his decision on the type of reasoning of Cohen, L.J., as has been seen above. It seems to make no difference whether or not contributions are made by the injured party. No contributions were

directly made in *Payne's* case, but as they were compulsorily made in *Judd's* case then Finnemore, J., quite rightly argued that *a fortiori* the pension should not be taken into account.

Importance of *Judd's* case

This, then, was the state of the law after *Payne's* case and it may be wondered why in fact *Judd's* case appeared in the law reports. The main reason is that in *Judd's* case it was argued that the law had been changed as a result of the well-known decision of *British Transport Commission* v. *Gourley* [1956] A.C. 185, where the plaintiff had been injured by reason of the negligence of the defendants. He was awarded £37,720 damages in respect of loss of earnings paying no regard to the income tax or surtax he would have had to pay on the amount of earnings had he not been injured. The trial judge assessed the damages at £6,695 if such hypothetical tax was taken into account. It was ultimately held by the House of Lords that such hypothetical tax should be taken into account.

The main reasons for the decision would seem to be that the House of Lords did not regard the plaintiff's liability to pay taxes as something which the law regarded as being too remote. This can be seen from the speeches of Lord Goddard (at p. 207) and Lord Reid (at p. 212). Lord Reid said:—

> "In my judgment, the real question in this case is whether the plaintiff's liability to pay taxes is something which the law must regard as too remote when determining or estimating what he has lost as a result of the accident. The defendant is only bound to pay damages based on an assessment of the plaintiff's actual and prospective loss taking into account all those factors which are not in law too remote. It has sometimes been said that tax liability should not be taken into account because it is *res inter alios*. That appears to me to be a wrong approach."

The relevance of this decision in *Judd's* case is that it was contended that as the test for remoteness was applied in *Gourley's* case, then the receipt of the pension was not too remote a consequence to be taken into account. In effect, of course, Finnemore, J., applied a test of remoteness based on the judgment of Cohen, L.J., in *Payne's* case and still came to the conclusion that the pension should not be taken into account. This shows how very flexible the law of remoteness is when applied in practice. Perhaps this is a good thing because rigid rules would certainly hamper the judges' discretion as to the assessment of damages. As long as a consistent approach is adopted, then this is all that really matters. The older approach to this type of problem was based on whether the receipt of the pension was the result of a contract between the injured party and some third person. This was the type of reasoning upon which it has been seen that Singleton, L.J., based his wider reasoning in *Payne's* case. It would seem that such reasoning is now out of date as a result of *Gourley's* case.

Position under Fatal Accidents Acts

It is interesting to compare the position under the Fatal Accidents Acts with the assessment of damages for the loss of earnings. By s. 1 of the Fatal Accidents Act, 1908, it is provided that in assessing damages in any action under the Act, any sum payable or paid on the death of the deceased shall not be taken into account if the sum was so paid or payable under a contract of insurance or assurance. This was an exception to the general rule, the strict application of which can be seen from the case of *O'Neill* v. *S. J. Smith & Co. (Bideford), Ltd., and Another* [1957] 1 W.L.R. 1204 (Q.B.D.). In that case a miner had been killed in a road accident caused by the negligence of the defendants. On his death, his widow and two infant children became entitled to certain weekly payments under a mine-workers' contributory pension scheme. Actions were commenced under the Fatal Accidents Acts and it was held that the pensions received by the dependants had to be taken into account because these were not sums payable under any contract of insurance or assurance.

This is not now good law as a result of the Fatal Accidents Act, 1959. By s. 2 of that Act it is provided that in assessing damages for a person's death there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death. Further a pension is defined to include a return of contributions and any payments of a lump sum in respect of a person's employment. It is noteworthy that within a very short period it was decided that pensions are not to be taken into account either at common law for damages for loss of earnings or by statute under the Fatal Accidents Acts.

J. M. A. B.

COUNSEL AT EXAMINATION OF WITNESSES

An interesting, and somewhat unusual, point arose recently during the holding of an examination of witnesses before one of the examiners of the court with which the writer of this article was concerned. The point dealt with the right of counsel to appear for a particular witness during his examination in order to raise an objection on his behalf to the production by him of certain documents which he had been required to produce at the instance of the party to the examination by whom he was being called and examined. Before the law governing the practice in such cases is considered it may be helpful shortly to state how the position arose on the facts. Prior to the two witnesses in question being examined by counsel for the plaintiffs in the action in the course of which the order for the examination was made, counsel made an application to the examiner for leave to appear on behalf of each of the witnesses in order to take an objection on their behalf to the production of certain documents by each of them. This application was resisted both by counsel for the plaintiffs, and also by counsel for the defendants to the action, and after some discussion the would-be witnesses' counsel withdrew his application, with the result that it was not necessary for the examiner to give his ruling on the application. Leave was, however, then given by him to the counsel concerned to be present on a "watching brief" at the examination of the two witnesses in order to take a note, to which course no objection was raised by either of the other two counsel.

R.S.C., Ord. 37

Rule 5 (1) in Pt. II of the R.S.C., Ord. 37, provides for the court or judge to order depositions to be taken as follows:—

> "The court or a judge may, in any cause or matter where it appears necessary for the purposes of justice, make an order for the examination upon oath before the

court or a judge or any officer of the court, or any other person, and at any place, of any witness or person, and may empower any party to any such cause or matter to give on deposition any evidence therein."

By r. 11 :—

"The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination."

It was held in *Wright* v. *Wilkin* (1858), 6 W.R. 643, under the Chancery Procedure Act, 1852, s. 31, from which the present rule is taken, that an examination so held is not one held in open court, but the examiner has a discretion whom to admit, in addition to the parties, their counsel, solicitors, or agents. As regards the practice applicable at such examination, however, this is the same as that which prevails at a trial in open court, since by r. 22 :—

"The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage."

(This rule is taken from s. 31 of the 1852 Act.)

As regards an objection by a witness to answering a question, by r. 14 (following s. 33 of the 1852 Act) :—

"If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Central Office to be there filed, and the validity of the objection shall be decided by the court or a judge."

(For examples of the grounds upon which a witness before an examiner may protect himself from answering any question, or producing any document, see Daniell's Chancery Practice, 8th ed., 1914, vol. 1, pp. 553, 554.)

Foreign Tribunals Evidence Act, 1856

The above position is the same in the case of an order made under R.S.C., Ord. 37, r. 54, for an examination of a witness made in pursuance of a request under a commission rogatoire or a letter of request emanating from a foreign court in the case of a civil or commercial matter pending before a foreign tribunal by virtue of the Foreign Tribunals Evidence Act, 1856, and in the case of a criminal matter, other than a criminal matter of a political character, by virtue of the Extradition Act, 1870, s. 24.

As regards the right of a witness in such an examination to refuse to answer questions and to produce documents, this is specifically preserved by s. 5 of the 1856 Act, which provides :—

"Provided also, that every person examined under any order made under this Act shall have the like right to refuse to answer questions tending to criminate himself, and other questions, which a witness in any cause pending in the court by which or by a judge whereof or before the judge by whom the order for examination was made would be entitled to ; and that no person shall be compelled to produce under any such order as aforesaid any writing or other document that he would not be compellable to produce at a trial of such a cause."

As regards such a right of a witness in a criminal matter, s. 24 of the 1870 Act provides for the testimony of such a witness to be obtained in relation to any criminal matter pending in any court or tribunal in a foreign State in like manner as it may be obtained in relation to any civil matter by the 1856 Act.

Rule 58 of the R.S.C., Ord. 37, governs the practice of such an examination, providing that, in the absence of any special directions being given in the order for the examination, the same shall be taken in the manner prescribed in Pt. II of R.S.C., Ord. 37, referred to above.

Evidence by Commission Act, 1859

A similar position arises in the case of an order for the examination of a witness in relation to any action, suit or proceeding pending before any court or tribunal of competent jurisdiction in Her Majesty's Dominions by virtue of s. 1 of the Evidence by Commission Act, 1859. As regards the right of a witness in such an examination to refuse to answer questions or produce documents, s. 4 of this Act contains a similar protection to that contained in s. 5 of the 1856 Act, which has already been set out. As regards the practice governing such an examination, r. 59 of R.S.C., Ord. 37, applies to applications under the 1859 Act the provisions of rr. 54 to 58 of Ord. 37, the effect of which has already been mentioned. (The particular examination which is the subject of this article arose by virtue of an order for the examination of a witness made under the 1859 Act.)

Witness objecting to answering a question or producing a document

As to the practice which governs the position where a witness in a suit objects to answering a question, or producing a document, it was held in *R.* v. *Adey* (1831), 1 M. & Rob. 94, that the privilege of taking an objection to answering a question upon the ground that it might subject him to criminal proceedings is the privilege of the witness, and not that of the party calling him ; and that the witness must take the objection himself, and that he has no right to have counsel to take the objection for him. (See also *Thomas* v. *Newton* (1827), 1 M. & M. 48*n*.) Similarly, it was held in *Doe d. Rowcliffe* v. *Egremont* (1841), 2 M. & Rob. 386, that a witness called on subpoena who objected to producing a document had no right to have the question of his liability to produce it argued by counsel retained by him for that purpose. (Cf. the position where a witness in proceedings instituted in consequence of adultery is protected from answering "any question tending to show that he or she has been guilty of adultery," by the Matrimonial Causes Act 1950, s. 32 ; see on the construction of the 1859 Act *Hebblethwaite* v. *Hebblethwaite* (1869), L.R. 2 P. & D. 29 ; and *Allen* v. *Allen* [1894] P.248, at p. 255.)

So far as the practice relating to the position of counsel who is briefed only to take a note is concerned, it is stated in the Annual Statement of the General Council of the Bar (1903–4, p. 13) that counsel briefed to take a note ought not to take any part in the trial or hearing.

M. H. L.

DOUBLE TAXATION: U.K. AND SWEDEN

A Double Taxation Convention relating to duties on the estates of deceased persons and a revised Double Taxation Convention relating to taxes on income (to replace the Convention signed on 30th March, 1949) between the United Kingdom and Sweden were signed in London on 28th July. Both Conventions are subject to ratification.

County Court Letter

FINGS AIN'T WOT

It is at this time of the year that fathers are traditionally expected to take off their shoes and socks, roll up their flannel trousers to the knee and, grasping their panamas firmly with the left hand, stride resolutely to their deck chairs and go to sleep. Traditionally also, in order to protect their eyes from the drizzle which has now begun to fall, they should place to-day's *Times* over their faces as an aid to post-prandial somnolence. Should it be that they have already read this from Personal Column to Property Investments during the thunderstorm after breakfast, it is just possible that, if they happen to be solicitors, in sheer desperation they will resort to the SOLICITORS' JOURNAL, the only thing still unread, for the purpose. On this assumption, and in the hope that they are sufficiently short-sighted to read something balanced on their noses, this article is written.

As they recline there, lulled by the sound of the breaking of waves on the shingle, the braking of cars in the car-park, the breaking of plastic spades and buckets by children and the breaking of good resolutions by their mums not to tell them exactly what they think of them, a vision may drift gently into their minds of the panoply of justice—the splendour and the majesty—the glory of the county court . . .

In their dream they will see the multitude assembled; the freeholders of the county in their legion; the sheriff, their elected representative, and of course the bishop and the earl, who add so much glory and dignity to the proceedings. For this was the county court—the court of the county—and at least in theory everyone who was anyone was there under the general control and direction of the sheriff, who, though elected by the freeholders, represented the monarch. Democracy in action, indeed.

Had the dreamers tuned in a little later they would have seen that the earl, fickle fellow, was no longer there, having no doubt found a super falconing meeting to attend. The bishop, too, would seem to be missing, someone having apparently realised that when it comes to temporal matters it is far safer to thank him kindly for his opinion than to act upon it, with the result that he had been told, we hope politely, to get out of it. The freeholders, too, seem to have found something frightfully important to do on their freeholds, but they were still there in theory.

After the Lord Mayor's Show

At this point, the first really heavy drops of rain, the harbingers of the afternoon's downpour, may cause the dream to take on a rather more H-certificate aspect. Gone is the splendour, the pageantry, the glory of the county court. In its place is the grim and grimy meeting place of Little Middling Urban District Council, where the Little Middling County Court is in session. Not even the mauve robes of the judge or the blue fingers and nose of the registrar can brighten the scene of unrelieved gloom. In an atmosphere largely created by the one coke stove which produces considerably more CO_2 than heat, justice is being dispensed by his shivering honour. True, the freeholders are there, mostly trying unsuccessfully to get possession orders against their tenants. From time to time, too, one may see the earl, applying for his discharge in bankruptcy. The bishop has retired hurt, behind the defensive screen of Ecclesiastical and Tithe Commissioners who appear on occasions in very temporal guise. The sheriff has long since washed his hands of the whole thing and allied himself with the Supreme Court. After all, someone has to arrange for the trumpets to blow the assize judges into court.

But what is this? A shaft of sunlight between the clouds, causing the sleepers to stir and undo a button or two of their plastic macs. The dream changes; the gloom lightens. After all, a little dream commentator whispers, the old county courts, despite their grandeur, were hopelessly inefficient. Long before the County Court Act of 1846 which set up the county courts as we know them to-day, innumerable Acts of Parliament had been passed by which courts of request or conscience were established in various areas to do the job of small debt collecting, for which no real machinery had previously existed. They themselves suffered from the disadvantage of having varied procedures and jurisdictions, so their general abolition and the creation of the modern county court system was a definite move towards standardisation, which is of course one of the deities of modern thought.

All mod. con.

Should you think that things have not improved, our mentor goes on, warming to his task as the sunshine grows stronger and the soaked clothes begin to steam, do not forget that in 1846 the jurisdiction of the county court was limited to £20, and the party could insist on a jury if the claim was over £5. Of course, £5 was £5 in those days, but a jury—well, talk about the steam roller and the nut!

It was only under the 1846 Act, incidentally (ss. 5 and 83), that it became possible for the parties and their wives to give evidence in the case. (Just imagine a modern running-down action without this vital and entirely disinterested testimony.) Also under ss. 92, 94 and 99 where fraud or contumacy were apparent the guilty party might be committed to prison for any period not exceeding forty days, without however extinguishing any part of the debt. Moreover, no writ of error or right of appeal existed in these courts, though the judge himself might order a new trial if he thought fit.

Look how much better it is to-day, the little prig goes on (tugging at the corner of a dream already trying to slip away into awareness that it is almost time for tea, and that the bathing should be perfect afterwards), a jurisdiction limit of £400, most of the advantages that the High Court has and some it has not, a free and easy atmosphere in usually good, modern courts, and a great deal of sound common-sense justice not unnecessarily fettered by strict rules of procedure. The wind of change is blowing—the tide of public opinion has changed—the sun shines on the modern litigant—but the SOLICITORS' JOURNAL has fallen to the sand. Father is awake again.

J. K. H.

Personal Notes

Mr. ALAN GRIFFITHS, deputy town clerk of Ossett since January, 1959, has been appointed clerk of Ramsey Urban District Council, Huntingdonshire, as from 1st September.

Alderman JOHN BARKER MAUDSLEY, solicitor, of Maidenhead, has been re-elected chairman of the Berks, Bucks and Oxon Non-County Boroughs Association.

County Court Letter

FINGS AIN'T WOT

It is at this time of the year that fathers are traditionally expected to take off their shoes and socks, roll up their flannel trousers to the knee and, grasping their panamas firmly with the left hand, stride resolutely to their deck chairs and go to sleep. Traditionally also, in order to protect their eyes from the drizzle which has now begun to fall, they should place to-day's *Times* over their faces as an aid to post-prandial somnolence. Should it be that they have already read this from Personal Column to Property Investments during the thunderstorm after breakfast, it is just possible that, if they happen to be solicitors, in sheer desperation they will resort to the Solicitors' Journal, the only thing still unread, for the purpose. On this assumption, and in the hope that they are sufficiently short-sighted to read something balanced on their noses, this article is written.

As they recline there, lulled by the sound of the breaking of waves on the shingle, the braking of cars in the car-park, the breaking of plastic spades and buckets by children and the breaking of good resolutions by their mums not to tell them exactly what they think of them, a vision may drift gently into their minds of the panoply of justice—the splendour and the majesty—the glory of the county court . . .

In their dream they will see the multitude assembled; the freeholders of the county in their legion; the sheriff, their elected representative, and of course the bishop and the earl, who add so much glory and dignity to the proceedings. For this was the county court—the court of the county—and at least in theory everyone who was anyone was there under the general control and direction of the sheriff, who, though elected by the freeholders, represented the monarch. Democracy in action, indeed.

Had the dreamers tuned in a little later they would have seen that the earl, fickle fellow, was no longer there, having no doubt found a super falconing meeting to attend. The bishop, too, would seem to be missing, someone having apparently realised that when it comes to temporal matters it is far safer to thank him kindly for his opinion than to act upon it, with the result that he had been told, we hope politely, to get out of it. The freeholders, too, seem to have found something frightfully important to do on their freeholds, but they were still there in theory.

After the Lord Mayor's Show

At this point, the first really heavy drops of rain, the harbingers of the afternoon's downpour, may cause the dream to take on a rather more H-certificate aspect. Gone is the splendour, the pageantry, the glory of the county court. In its place is the grim and grimy meeting place of Little Middling Urban District Council, where the Little Middling County Court is in session. Not even the mauve robes of the judge or the blue fingers and nose of the registrar can brighten the scene of unrelieved gloom. In an atmosphere largely created by the one coke stove which produces considerably more CO_2 than heat, justice is being dispensed by his shivering honour. True, the freeholders are there, mostly trying unsuccessfully to get possession orders against their tenants. From time to time, too, one may see the earl, applying for his discharge in bankruptcy. The bishop has retired hurt, behind the defensive screen of Ecclesiastical and Tithe Commissioners who appear on occasions in very temporal guise. The sheriff has long since washed his hands of the whole thing and allied himself with the Supreme Court. After all, someone has to arrange for the trumpets to blow the assize judges into court.

But what is this? A shaft of sunlight between the clouds, causing the sleepers to stir and undo a button or two of their plastic macs. The dream changes; the gloom lightens. After all, a little dream commentator whispers, the old county courts, despite their grandeur, were hopelessly inefficient. Long before the County Court Act of 1846 which set up the county courts as we know them to-day, innumerable Acts of Parliament had been passed by which courts of request or conscience were established in various areas to do the job of small debt collecting, for which no real machinery had previously existed. They themselves suffered from the disadvantage of having varied procedures and jurisdictions, so their general abolition and the creation of the modern county court system was a definite move towards standardisation, which is of course one of the deities of modern thought.

All mod. con.

Should you think that things have not improved, our mentor goes on, warming to his task as the sunshine grows stronger and the soaked clothes begin to steam, do not forget that in 1846 the jurisdiction of the county court was limited to £20, and the party could insist on a jury if the claim was over £5. Of course, £5 was £5 in those days, but a jury—well, talk about the steam roller and the nut!

It was only under the 1846 Act, incidentally (ss. 5 and 83), that it became possible for the parties and their wives to give evidence in the case. (Just imagine a modern running-down action without this vital and entirely disinterested testimony.) Also under ss. 92, 94 and 99 where fraud or contumacy were apparent the guilty party might be committed to prison for any period not exceeding forty days, without however extinguishing any part of the debt. Moreover, no writ of error or right of appeal existed in these courts, though the judge himself might order a new trial if he thought fit.

Look how much better it is to-day, the little prig goes on (tugging at the corner of a dream already trying to slip away into awareness that it is almost time for tea, and that the bathing should be perfect afterwards), a jurisdiction limit of £400, most of the advantages that the High Court has and some it has not, a free and easy atmosphere in usually good, modern courts, and a great deal of sound common-sense justice not unnecessarily fettered by strict rules of procedure. The wind of change is blowing—the tide of public opinion has changed—the sun shines on the modern litigant—but the Solicitors' Journal has fallen to the sand. Father is awake again.

J. K. H.

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GOVERNMENT ADVISORY COMMITTEES

Big fleas have little fleas to plague, perplex and bite 'em,
Little fleas have lesser fleas, and so ad infinitum.

A FEW months ago we had occasion to refer to the practice, which is widespread in this country, of appointing committees to deliberate upon anything and everything (p. 357 in our issue of 6th May). Now *Political and Economic Planning* has published an interesting and valuable report of over 200 pages on " Advisory Committees in British Government " (George Allen and Unwin, £1 5s. net). The inquiry was limited to consideration of advisory committees attached to central Government Departments in Britain of a standing or permanent rather than a temporary character in 1958. Such temporary bodies as Royal Commissions and committees of inquiry, as well as local and regional committees, were excluded. The report estimated that the advisory bodies within its scope, and containing non-official members, numbered 484. Over 100 of these had a statutory basis for their existence.

The history of modern times is reflected in the titles of statutes under which committees of one type or another were set up or operate. The earliest listed in the report is the Cruelty to Animals Act, 1876, under which the advisory committee on its administration operates. Still dating from pre-1914 years are the Safety Appliances Committee established by the Railway Employment (Prevention of Accidents) Act, 1900, the Development Commission operating under the Development and Road Improvement Funds Act, 1909, and the Ancient Monuments Board for England with powers derived from the Ancient Monuments Consolidation and Amendment Act, 1913.

The first world war is commemorated by the Special Grants Committee and the Central Advisory Committee on War Pensions with authority under, respectively, the Naval and Military War Pensions, &c. (Transfer of Powers) Act, 1917, and the War Pensions Act, 1921. Statutes of the twenties which directly empowered committees also include the London Traffic Act, 1924, the Therapeutic Substances Act, 1925, the Rating and Valuation Act, 1925, the Merchandise Marks Act, 1926, and the Fertilisers and Feeding Stuffs Act, 1926. Agriculture received attention during and after the thirties with committees established under the Agricultural Marketing Act, 1931, the Agriculture (Miscellaneous Provisions) Act, 1941, the Hill Farming Act, 1946, the Agriculture Act, 1947, and the Agricultural Holdings Act, 1948. Trade was not overlooked with committees meeting under the Cinematograph Films Acts, 1938 to 1948, the Statistics of Trade Act, 1947, and the Monopolies and Restrictive Practices (Inquiry and Control) Act, 1948.

Post-war planning, nationalisation and the increasing scope of welfare services are, as might be expected, duly reflected in committees created under statutory sanction. These include bodies operating under the Education Act, 1944, the Distribution of Industry Act, 1945, the Coal Industry Nationalisation Act, 1946, the Transport Act, 1947, the National Insurance Acts, 1946, the National Health Service Act, 1946, the Children Act, 1948, and the Legal Aid and Advice Act, 1949. Still more recent enactments with derivative committees include the Protection of Birds Act, 1954, the Clean Air Act, 1956, and the Housing Act, 1957. The Acts mentioned are merely samples and there are far more committees operating under Government Departments than directly under statutory powers.

Departmental advisory committees

Most Government Departments have set up advisory committees. A table in the report shows the Ministry of Agriculture, Fisheries and Food as having the most with fifty-four, the Ministry of Supply (still in existence in 1958) next with forty-one, followed by the Ministry of Labour and National Service (thirty-nine) and the Board of Trade (thirty-eight). At the other end of the scale come certain minor departments with only one or two advisory committees, such as the Land Registry, the Public Record Office and the General Register Office. The only committee attached to the Lord Chancellor's office was the advisory committee established under the Legal Aid and Advice Act, 1949. Surprisingly, the National Savings Committee had ten advisory committees in 1958 and the Forestry Commission five. The report urges caution in relying on the figures cited owing to difficulties connected with statistics and definitions; though the actual numbers given may not be completely accurate, presumably they can be taken to indicate the relative scale on which different departments utilise committees.

The report suggests that, broadly, advisory committees can be regarded as being of three main types, consultative, expert and administrative. Various motives for governments to set up committees are given: to obtain what is termed " disinterested advice," and the Central Advisory Council for Education (England) and the Engineering Advisory Council are named as examples; to launch a new policy on the public, the Central Housing Advisory Committee and the National Joint Advisory Council at the Ministry of Labour being cited in this connection; and to enable a Minister to avoid taking decisions himself on certain matters, or to be partly shielded from criticism when he does take them, e.g., the Capital Issues Committee and the National Insurance Advisory Committee.

Value of advisory committees

The report suggests that the value of a consultative committee can partly be judged by the frequency of its meetings, and consumer committees as ordinary advisory committees are (charitably ?) described " as consultative bodies of middling importance." Part of the influence of the next group—expert committees—especially of the less specialised variety, is said to be similar to that of consultative committees, namely, " a matter of contacts and general discussion, of promoting understanding whatever the immediate decisions." The more such committees widen their scope, the more they approach the political level of policy-making. Administrative committees are most influential of all, their recommendations being " virtually decisive."

The report opines that advisory committees have grown in importance because they permit direct consultation and provide specialist advice outside political party influences. Scientific committees are thought to have the strongest independent influence. It is said that statutory committees carry no more weight than non-statutory ones and that their terms of reference can be surprisingly flexible. In commenting that not all departments have a well-developed

system of advisory committees the report comments: "In some instances there may be little scope—there are no doubt better experts on taxation in Inland Revenue than there are outside." This example is not a happy one. There are, of course, many more experts on taxation concentrated in that Department than elsewhere. Their duty is to guard the Revenue's interests. It cannot be assumed, however, that civil servants will be best equipped to discover inconsistencies, remedy inequities and urge reform. Members of the Bar, solicitors and accountants specialising in taxation can be expected more efficaciously to do the first and an independent outside body (possibly including some Members of Parliament) to carry out the other items. By way of illustration, to outsiders at any rate it is self-evident that a measure consolidating estate duty law is long over-due; would not an outside body be able to induce or expedite efforts to this end on the part of the Revenue?

Elite group?

The report tackles the allegation that the same persons are repeatedly appointed to serve on Government committees. That there is a certain amount of plurality of membership of committees is clearly shown in two examples. On Home Office committees four individuals sat on four committees, nine on three committees and twenty-one on two committees. It is said that much of this can be attributed to the practice of the County Councils' Association and the Association of Municipal Corporations nominating the same persons to groups of committees. On twenty-six Board of Trade advisory committees, two individuals belonged to three committees and twenty individuals to two committees. Some persons sit on more than one committee of different departments. The report cautiously observes that "there are some grounds for the suspicions that plurality is excessive."

One reason advanced for the existence of plurality is that there is a limited circle available for certain appointments, often of the independent layman type. Although travelling expenses and subsistence allowances are generally payable to members, few committee members are remunerated. Members of some committees do receive fees; these bodies include certain scientific and research councils, the University Grants Committee, the National Insurance Advisory Committee, the Industrial Injuries Advisory Council and the Air Transport Advisory Council.

Recruitment difficulties

One reason why recruitment to committees is difficult is mentioned later in the report. This is that experts will not serve if they feel their time is wasted. (This observation should not be limited to "experts.") Therefore the report advocates that Ministers' reasons for rejection or delay of committees' recommendations should be made as explicit as possible. The report advocates greater publicity for the work and reports of committees.

A conclusion of the report may, however, give a clue to another reason why suitable persons are not willing to serve on Government committees. Advisory committees, says the report, "offer a glimpse of a counter-system to popular democracy as a method of policy-making," and "entail a search for rationality." They "proceed by discussion and compromise, by argument and agreement; they constitute policy-making machinery for government at low temperature." It is this (inevitable?) compromise, watering down or uneasy amalgam of ideas which may well discourage the desire of persons to participate in the work of advisory committees. Often any one of two or three possible positive courses would be preferable to follow than the acceptance of a combination of the most pedestrian points in each. In many cases no votes are taken on committees, the chairman concerned instead assessing the feel of the meeting. There must be occasions where, after discussion, instead of following a weak compromise line consequent on such assessment it would be preferable to have a vote taken to show what support each of the distinct alternative courses attracted. We submit that the knowledge of the "low temperature" and compromise of advisory committees must keep away potential members who want to avoid being in the position of pleasing nobody, consequent on the committee's adoption of some lame middle-of-the-road policy possessing no real merit except one of apparent unanimity on the part of the committee's members.

N. D. V.

Landlord and Tenant Notebook

"EVICTION" UNDER STATUTORY POWERS—I

THE lease before the court in *Commissioners of Crown Lands* v. *Page* [1960] 3 W.L.R. 446; p. 642, *post* (C.A.), in which six years' arrears of rent were claimed, had been granted in 1937, for a term of twenty-five years. The grantors were the King's Most Excellent Majesty and the Commissioners of Crown Lands (now the Crown Estate Commissioners). There was no express covenant for quiet enjoyment. The premises were a house.

In 1939 Parliament enacted the Emergency Powers (Defence) Act of that year, pursuant to which certain Defence (General) Regulations were made forthwith. Of these, reg. 51 authorised the taking of possession or control on behalf of His Majesty of such properties as the house comprised in the lease, the Compensation (Defence) Act, 1939, entitling the lessee to a sum equal to the rent which might reasonably be expected to be payable by an occupier. Regulation 51 was subsequently continued in force by the Supplies and Services (Transitional Powers) Act, 1945.

Somewhat late during the war, namely, on 22nd February, 1945, the Minister of Works took possession of the house under the regulations, and he retained possession until 3rd September, 1955. The lessee did not ask for compensation rent and the lessors did not ask for the rent reserved by the lease until after its expiry; then, the Limitation Act, 1939, having been pleaded, they limited their claim to the rent due in the six years immediately before the issue of the writ. The defence relied on "eviction," and it was conceded that the Crown must be regarded as one and indivisible, so that it had requisitioned what it had itself demised. (A newly appointed Chancellor of the Exchequer did, I believe, once find himself signing a refusal of a request which he had himself recently made, when he had had charge of a different department.)

Essentials of eviction

Examining the requisites of eviction at law, the Court of Appeal adopted the reasoning and conclusions used and reached in *Upton* v. *Townend* (1855), 17 C.B. 30. This authority had in fact been cited on behalf of the lessee, presumably because it illustrated what was held to be eviction: demised premises had been destroyed by fire, and rebuilt by the lessors in such a way that their identity was lost. But Jervis, C.J., had said that eviction meant "not a mere trespass and nothing more, but something of a grave and permanent character done by the landlord with the intention of depriving the tenant of the enjoyment of the demised premises"; Williams, J., said that there were "clearly some acts of interference by the landlord with the tenant's enjoyment of the premises which do not amount to an eviction, but which may be either acts of trespass or eviction according to the intention with which they are done. If those acts amount to a clear indication of intention on the landlord's part that the tenant shall no longer continue to hold the premises, they would constitute an eviction," and Willes, J., had said that the tenant had by an act of the landlord "which was intended to be, and was, of a permanent character, been deprived of the perfect and convenient use of the thing demised."

But Lord Evershed, M.R., also cited a passage from a text-book which says that the lessee must establish that the lessor, without his consent or against his will, *wrongfully* entered upon the premises and evicted him and kept him so evicted. In my submission, the presence of the word which I have italicised gave rise to, or at all events indicates, the difficulties which had to be resolved. The lessors had entered without the lessee's consent and against her will; but had they entered wrongfully? But the first point considered in Lord Evershed, M.R.'s judgment was of intention to deprive by an act of a permanent character.

Permanence

The learned Master of the Rolls observed that ten out of seventeen years (the residue) was substantial; but drew attention to the fact that of the statutes conferring the power, one spoke of "Emergency" and the other of "Transitional." "Permanent" might be the antithesis of "temporary"; but the meaning of "temporary" might vary greatly according to circumstances. (One might add that "permanent" does not necessarily mean "sempiternal": take the cases of ways, waves and secretaries.) His lordship considered that, the duration being uncertain, it might be possible to regard the requisitioning as temporary. He preferred, however, to leave the point undecided, and to turn to the aspect of intention.

Intention

The situation was, Lord Evershed, M.R., pointed out, one not contemplated by the common law when *Upton* v. *Townend* was decided; when the Crown took action under the two statutes, its intention could not be said to be an intention to deprive the lessee of his enjoyment of the premises, or an intention that he should no longer hold the premises. The fact that compensation was payable was in point and the intention to be attributed to the Crown was "an intention to disturb the lessee's enjoyment of the premises as a licensee during the 'emergency' without otherwise qualifying the lessee's interest or 'possession' under the demise, and on terms that the lessee should, by way of 'rent' or otherwise, be fairly compensated for the licence; in other words, that the lessee should be put in no worse position than he would occupy if he had granted a sub-tenancy for the duration of the requisition on terms appropriate to a sub-demise between a willing sub-lessor and sub-lessee." This was not considered consistent with the intention requisite to an "eviction."

Wrongfulness

Coming to the question of wrongfulness, Lord Evershed, M.R., examined the argument that this need not be actionable, and agreed that it did not mean "tortious." But the alleged deprivation of possession could not be relied upon, as there was no deprivation of possession in law; nor was there any derogation from grant. There remained the possibility of breach of covenant for quiet enjoyment.

I shall have more to say about quiet enjoyment when I come to discuss Devlin, L.J.'s judgment, which proceeded on slightly different lines and will be the subject of a later "Note-book"; for the present, it is sufficient to say that Lord Evershed, M.R.'s view was that the implied covenant should be treated as qualified so as not to extend to the exercise of powers and duties imposed on the Crown by statute.

The presence of the word "wrongfulness" in the passage adopted remains somewhat puzzling, and it is of some interest that in his judgment Ormerod, L.J., observed that only one of the judges concerned in *Upton* v. *Townend* had used the word.

(To be concluded) R. B.

"THE SOLICITORS' JOURNAL," 11th AUGUST, 1860

On the 11th August, 1860, The Solicitors' Journal wrote: "The Criminal Law Consolidation Bills have been again withdrawn from the consideration of Parliament, very little to the credit of all parties concerned in their production. . . . It is right . . . that criminal law consolidation should be placed by itself upon a special pedestal of disgrace. These same Criminal Bills were in hand before the existence of the late Statute Law Commission of which Mr. Bellenden Ker was the worthy head and for years they were the main excuse of Parliament for the prodigal and fruitless expenditure of these commissioners. When at length the commission was swept away by the rising indignation of the profession and of all who took any interest in its doings, these Criminal Law Bills were made to figure in the political programme of the Government of the day; and they have been used by every succeeding Government by way of political capital; but with manifest bad faith by them, judging by the result in every case. It is high time for this scandal to cease; for such proceedings are not much calculated to gain respect for our system of Parliamentary Government. If it be impracticable for the Government to pass such Bills as these, sanctioned as they have been by the highest and most competent authorities—produced, moreover, with an utter disregard of expense—and involving no topics which are calculated to raise discussion, what chance can there be for measures such as those which are required for the reconstruction and codification of our laws relating to bankruptcy and public companies? The suggestion made the other night in the House of Commons by Mr. Malins, that such Bills might be better dealt with by a select committee . . . is well worthy of consideration, since there appears to be no other means of obtaining from Parliament the enactment of measures, required for the consolidation of extensive branches of the law."

HERE AND THERE

MAN OF BOSHAM

I AM very glad indeed to see that the Man of Bosham has achieved immortality in the law reports ([1960] 3 W.L.R.210). For such an apotheosis some thousands of pounds in costs is well spent, since, the Bible and Shakespeare apart, no literature is so often or so diligently perused as these volumes which, generation after generation, are studied and cited and read aloud from Canada to Calcutta and round to the Antipodes. So all round the world the name of Bosham, uttered in every unimaginable variation of pronunciation and intonation (anything indeed, except the true Sussex "Bozzam") will stand for ever for local individuality defiantly surviving amid the flattened uniformity of the standardised State. After all, though John Hampden lost the Ship Money case in the courts, he won it in the higher tribunal of history, and history is the strong point of that little tidal creek in Chichester harbour. Here Vespasian had a villa and his Second Legion a camp. Here in the seventh century, when all around were pagans, was a little monastery of five or six brothers, ruled by an Irish monk called Dicul, and, "encompassed by the sea and woods," they "served Our Lord in poverty and humility, but none of the natives cared either to follow their course of life or hear their preaching." Here Danish pirates stole the great church bell but, overloaded with the loot, their ship foundered before reaching the open sea, and still the drowned bell answers the bells that peal on shore, if, indeed, the sound be not the echo flung back by the woods of West Ichenor. Here Canute had a palace and here he staged his celebrated sea-shore demonstration of the folly of his courtier's flattery, who said he could command the tides—although Southampton impudently claims to be the place. And so on down to our own time.

BURIED TREASURE

WHO, then, would not be proud to be a Man of Bosham, even though the title does sound as if it had come straight out of the poems of Edward Lear? There is something in the haphazard way in which English law and England itself has developed that allows one to hope that there may be a brother to the man of Bosham round any corner. That film far too rarely revived, "Passport to Pimlico" (based, you remember, on a charter which was suddenly discovered to have given a little knot of London streets a status of independence) stemmed from that startling possibility. "The Napoleon of Notting Hill," with Provost Adam Wayne calling his preposterous halberdiers to arms to defend the integrity of Pump Street against the businessmen and town planners who would have driven a new road through it, embodies the same idea. And, indeed, the idea is no more fantastic than the reality of *Ashford* v. *Thornton*, when the nineteenth century lawyers, rubbing their eyes and their heads in surprise, discovered that trial by battle, complete with the gage thrown down in open court, was still part of the law of England. In the great untidy treasure chest of our law, you never know what you may find, provided you rummage intelligently enough. Is that pillar of the British Constitution, the Steward of the Chiltern Hundreds any more (or any less) fantastic than a Man of Bosham? I look forward eagerly to the day when one on whom that historic office has been conferred will express the most exemplary zeal for his duties and awaken perhaps a fierce individuality and pride and freedom among the Men of the Chiltern Hills. The Man on the Clapham Omnibus has too long been the darling of the English law. He is reasonable and amenable, middle-class and middle-aged, and he travels from suburb to City and back with depressing regularity. Let the Man of Kent and the Kentish Man and the Purbeck Marblers come forward for a start and join the Man of Bosham in his creek to reassert the varieties of human personality rooted in some steadfast piece of earth. Perhaps the country solicitors may hold the key to their re-emergence in the life of the nation, solicitors like the late Reginald Hine of Hitchin, deep in those records which accumulate in the cupboards and cellars of their offices. Here in the patchwork of manorial rights and charters and franchises and private Acts of Parliament who knows what weapons might not be unearthed to trouble the town and country planners with the strange idea that whenever they draw lines upon a map they are dealing, not with units of personnel, but with the individual human persons who live and have their roots there?

RICHARD ROE.

BOOKS RECEIVED

Advocacy—Its Principles and Practice. By R. K. SOONAVALA, B.A. (Hons.), LL.B. With an introductory note on "The Art of Advocacy" by the Hon. Mr. Justice M. C. CHAGLA, B.A. (Oxon), Barrister-at-Law. pp. xvi and (with Index) 959. 1960. Bombay: N. M. Tripathi Private, Ltd. Agents in the U.K.: Sweet & Maxwell, Ltd. £2 10s. net.

The Local Government Library: Encyclopaedia of Housing Law and Practice. Release No. 8, 1st March, 1960. London: Sweet & Maxwell, Ltd.

The Local Government Library: Encyclopaedia of the Law of Compulsory Purchase and Compensation.—Release No. 1, 20th June, 1960. London: Sweet & Maxwell, Ltd. Supplied to purchasers of the main work.

Money at Work. A Survey of Investment. Second Edition. Edited by MILTON GRUNDY. pp. xi and 263. 1960. London: Sweet & Maxwell, Ltd. 18s. 6d. net.

The Modern Law Review. Volume 23, No. 4—July, 1960. London: Stevens & Sons, Ltd. Annual subscription: £2 5s.; single copies: 10s.

Current Legal Problems, 1960. Volume 13. Edited by GEORGE W. KEETON and GEORG SCHWARZENBERGER. pp. vii and (with Index) 302. 1960. London: Stevens & Sons, Ltd. £2 10s. net.

Kime's International Law Directory for 1960. Sixty-eighth Year. Edited and compiled by PHILIP W. T. KIME, O.B.E. pp. xiv and (with Index) 543. 1960. Watford: Kime's International Law Directory, Ltd. 15s. net.

The Journal of Criminal Law. July, 1960—No. 95. London: The Journal of Criminal Law. Published quarterly: 15s.

The "British Tax Review" Guides No. 2: Common Market Fiscal Systems. By E. B. NORTCLIFFE. pp. viii and (with Index) 90. 1960. London: Sweet & Maxwell, Ltd. £1 1s. net.

Law and Policy. The W. M. Martin Lectures, 1957. By J. A. CORRY, LL.B., B.C.L., LL.D. With a foreword by F. C. CRONKITE. pp. 78. 1959. Toronto: Clarke, Irwin & Co., Ltd. Agents in the U.K.: Sweet & Maxwell, Ltd. £1 5s. net.

REVIEWS

An Outline of Planning Law. Third Edition. By DESMOND HEAP, LL.M., P.P.T.P.I., Comptroller and City Solicitor to the Corporation of London. pp. xxxvii and (with Index) 213. 1960. London: Sweet & Maxwell, Ltd. £1 5s. net.

The first edition of this book was published in 1949 when the Town and Country Planning Act, 1947, was the up-to-date basis for planning law. Since then the law has undergone many vicissitudes; and the occasion for the third edition is the passing into law of the Town and Country Planning Act, 1959, and incidentally the celebration this year of what is, as the author points out, the beginning of the second half century of town planning law. But this law seems ever-changing, and already, before the book appeared, the Caravan Sites and Control of Development Act, which substantially alters the planning enforcement procedure, was on its way through Parliament to make further amendments. Here, however, the author has taken time by the forelock, for his section on enforcement concludes with a statement of the law which was yet to be.

The first edition was designed "to provide a concise and reasonably complete statement of the new planning law in as readable a form as possible," and enjoyed immediate success. In the new edition the original layout is retained with, as the author says, as little disturbance to this layout as possible. Both the book and its author are so well known that the reviewer hesitates to offer comment, but he would venture to suggest that perhaps the time has come when a wider reappraisal of the up-to-date values of the various parts of the law would be justified. Thus to devote only about one page out of the whole book (apart from a further two pages on the special subject of designation for compulsory purchase) to the contents of a development plan and to omit any reference at all to the important Town and Country Planning (Development Plans) Direction, 1954, seems to the reviewer to belittle the place of the plan in the framework of the law. On the other hand, two and a half pages are devoted to s. 33 of the 1954 Act, now repealed and of little interest. In one or two places, too, undue compression is apt to produce a misleading statement, e.g., that a development plan must be reviewed at not less than five-yearly intervals, amended and "resubmitted to the Minister for approval." But choice of emphasis and the necessary compression of the law are difficult problems for any author of an outline, and it is no small achievement to cover, as the book does, the whole field of planning law in 202 pages.

This edition deserves to enjoy the success its predecessors have had and may be recommended fully to any reader who wishes to have an outline of this seemingly ever more complicated branch of the law.

Pension Schemes and Retirement Benefits. Second Edition. By GORDON A. HOSKING, F.I.A., Fellow of the Royal Statistical Society, Associate of the Institute of Taxation. pp. xv and (with Index) 466. 1960. London: Sweet & Maxwell, Ltd. £2 10s. net.

In bygone days private pension schemes were something of a rarity, and were substantially confined to employees in Government service and to the staffs of banks, insurance companies and the larger commercial firms. The smaller employers, in so far as they made provision for pensions at all, tended to do so informally through the medium of a life assurance office, and such provision was often confined to managerial and supervisory staff.

To-day the position is radically different. The high level of taxation has made saving difficult outside the ambit of a superannuation scheme, and adequate pension provision is becoming to an increasing extent an essential element in the terms of service that must be offered by employers wishing to attract and retain good quality staff. Consequently, even relatively small firms are setting up pension schemes either under their own auspices or under those of an insurance company. The solicitor to such a firm may be called on to draw up or examine the rules of a scheme and frequently the trust deed also. Once involved, the practitioner will often be consulted on other aspects, not all of them of a strictly legal nature. It is here that Mr. Hosking's book will be found invaluable.

In this, the second edition, the author brings up to date his authoritative survey of the background to superannuation schemes of which he has intimate experience. A new feature is a discussion on the effect of the National Insurance Act, 1959 (which is to come into force in April, 1961). This will involve a decision on the part of those responsible for most schemes on whether or not to contract out of the graduated portion of the National scheme. Valuable guidance is given on this point in the light of current conditions, although in our view the author gives insufficient consideration to the possibility that in a future revision of the National scheme those employers who have contracted out may be treated less generously than those who have not.

In considering the effect of inflation on the real value of pension benefits, the author draws attention to the dilemma that a complete guarantee of a fund's solvency by the employer may commit him to an outlay considerably in excess of what he had contemplated, whereas in the absence of such a guarantee the pensions becoming payable may prove quite inadequate. The author's solution is to provide only a limited guarantee, but to increase the level of emerging pensions if necessary, notwithstanding that this may involve the employer in a higher total cost. He advocates this on the rather doubtful ground that "fulfilling a guarantee given some years earlier does little to improve the employee-employer relationship but making an *ex gratia* grant to improve benefits does."

Perhaps the greatest virtue of the book is the clear exposition of what is permissible under current legislation (up to and including the Finance Bill, 1960) and, from some points of view even more important, of the current practice of the Inland Revenue authorities as regards the conditions they require to be met before granting their indispensable seal of approval, without which no tax concessions can be claimed. Not least valuable is the digest of relevant legislation and statutory regulations given in the appendices.

Book-Keeping and Accountancy for Solicitors. By P. HARRISON, Solicitor, and A. G. HILLMAN. pp. ix and (with index) 276. London: Butterworth & Co. (Publishers), Ltd. £2 7s. 6d. net.

Here is another book prepared in "twin binding," so that the illustrations at the end may be more conveniently studied at the same time as the text is read. It thus forms a fitting companion to Rowland's Trust Accounts, as it will fall to be read and digested by the same important section of the professional public.

But interest in it should by no means be confined to Intermediate students. More than a third of the text and about two-thirds of the illustrative matter are concerned with the internal accounts of solicitors' practices, and there are many reasons, quite apart from examination requirements, why this part of the subject should be made as familiar as possible to all members of our branch of the profession. The principles and operation of two different systems are clearly explained, together with some account of a modern card-index system.

On the general subject of accountancy the book is scarcely less useful, for the reader who wants a broad introduction to the problem of interpreting business figures will find the necessary terms defined and the points to watch indicated in a manner which nobody should have any difficulty in following. If a balance sheet may be said to speak, this is the sort of book to increase the size of its audience.

Club Law and Procedure. Thirteenth Edition. Edited by FRANK R. CASTLE. pp. (with Index) 188. 1960. London: Working Men's Club and Institute Union, Ltd. 8s. 6d. net.

This is an invaluable handbook for club officials, dealing as it does with such diverse topics as a club's liability for income tax, insurance, gaming, registration and the licensing laws so far as they may apply to clubs. This work is also of use to practitioners in so far as it gives a ready answer to many of the questions which they are asked so frequently. For example: "Is it lawful to play 'housey-housey'?" or "In what circumstances is it lawful to supply intoxicants to club members for consumption away from the club premises?" Straightforward answers to these and many other questions may be found with the minimum of searching, although lawyers would find this book of even greater assistance if more references to cases and statutory provisions were included.

COMPANY LAW REFORM: LAW SOCIETY'S MEMORANDUM

In their memorandum to the Departmental Committee on Company Law, the Council of The Law Society express the opinion that in general the various statutory enactments and departmental regulations relating to companies are working well. They do not favour any extension of statutory control, since that would imperil the flexibility of the law and frustrate business enterprise. Nevertheless improvements which would provide greater protection for investors and the general public are possible.

Of particular interest is the view that the *ultra vires* rule is out of date. At present a person dealing with a company must either inspect the memorandum of the company at the Companies Registry in order to satisfy himself that the proposed transaction is within the objects of the company as defined in its memorandum, or accept the risk of the transaction being *ultra vires* and void. The Council recommend that the *ultra vires* rule should be abolished as regards third parties. If the objects of a company are restricted, any breach of the restrictions would be a domestic matter as between a company and its members and directors. Another rule which the Council believe to have survived its usefulness is that prohibiting partnerships with more than twenty members. The reason for the rule has been judicially stated as being " to prevent the mischief arising from large trading undertakings being carried on by large fluctuating bodies." To-day, however, the desire to limit the liability of members and the incidence of taxation have caused the incorporation of large trading undertakings. Whilst the original basis for the provision has gone, it causes inconvenience particularly to professional firms. In these firms the increase in variety and complexity of the topics dealt with calls for a higher degree of specialisation than in the past and a consequent increase in the number of partners if competent advice is to be given. The Council therefore recommend that the prohibition should be abolished.

The Council are concerned that minority shareholders should be adequately protected from oppression by the majority. They believe that the protection at present afforded by s. 210 of the Companies Act, 1948, is inadequate. The onus of proving oppression, which is placed on the applicant, is heavy and at the same time he may find it impossible to obtain, before the filing of an application, the information upon which that application must be based. Moreover, the expense of the procedure presents a great deterrent against the bringing of actions. The Council have received complaints that in some small private companies, a " working " director holding a bare majority of the shares so arranges the affairs of the company that his own salary is paid regardless of whether the company makes a profit. The Council therefore suggest that the scope of s. 210 should be extended to afford protection to minority shareholders in private companies who neither receive reasonable dividends nor are able to sell their shares at a reasonable price. On take-over bids, the Council emphasise that these are ordinarily the result of normal commercial factors and, as a general proposition, operate in the national interest as they tend to promote the best utilisation of resources. Most take-overs are carried out without adverse criticism, and the fact that a few cases have attracted much attention merely shows that these cases are exceptional. The Council consider that it is undesirable to make regulations as to take-over bids which might hinder amalgamations, or cause undue delay or complication in organising them. Delay after the announcement of an intended take-over is particularly harmful. Rumours of bids, if there is delay in confirming or denying them, are even more harmful because they lead to speculation in the shares concerned and damage the morale of employees; but as a practical matter the remedy lies in the hands of the directors, who alone have the necessary information to decide whether or when to make an announcement. The draft of the Licensed Dealers (Conduct of Business) Rules, 1960, issued by the Board of Trade under the Prevention of Fraud (Investments) Act, 1958, is welcomed as a valuable code of conduct as to those take-over bids which fall within their terms. On points of detail, the Council recommend that circulars advising against acceptance should be subject to the same control as circulars advising acceptance, that directors of an offeree company should be entitled to reimbursement by the offeree company of expenses properly incurred by them arising out of an offer for shares of the offeree company, and that no obligation to disclose his identity should be imposed upon a bidder.

Regarding the duties of directors, the Council recognise that there is both a lack of precision in their definition, and a failure by many directors to realise that their basic duty is of a quasi-fiduciary nature. Codification of these duties is however impracticable, and would inevitably produce more evils than it would cure, because no code could cover every set of circumstances. The Council can see no objection to the existence of nominee directors, or to an individual holding a number of directorships. They would be prepared to permit loans to " working " directors in connection with house purchase, and also in connection with the purchase of their company's shares. In addition to their recommendations on topics of major importance, the Council make a large number of suggestions which are designed to improve company practice and procedure. There is a proposal that the jurisdiction of the Board of Trade regarding companies with similar names should be extended, and there is also a detailed scheme for the simplification of share transfer procedure. There are many suggestions for reductions in the number and length of forms to be completed and documents to be filed. Indeed the keynote of the memorandum is stated to be a plea for simplicity and intelligibility.

COUNTY COURT DISTRICTS: CHANGES

The County Court Districts (Seaham and Parish of Norton Mandeville) Order, 1960 (S.I. 1960 No. 1249), which becomes operative on 1st October, 1960, provides that the holding of the Seaham County Court shall be discontinued and that the parish of Haswell shall be transferred to and form part of the Durham County Court district and that the remaining parishes constituting the district of Seaham County Court shall be transferred to and form part of the Sunderland County Court district. The order further provides that the Sunderland County Court shall have jurisdiction in the case of proceedings commenced in the Seaham County Court before the order comes into operation; and that the parish of Norton Mandeville shall cease to form part of the district of the Brentwood County Court, and shall be transferred to and form part of the district of the Chelmsford County Court.

THE SOLICITORS ACT, 1957

On 28th July, 1960, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that there be imposed upon MICHAEL TALBOT HARRAWAY, of No. 2 Field Court, Gray's Inn, London, W.C.1, a penalty of £25 to be forfeit to Her Majesty, and that he do pay to The Law Society the sum of £10 10s. towards the applicant's costs of and incidental to this hearing.

On 28th July, 1960, an order was made by the Disciplinary Committee constituted under the Solicitors Act, 1957, that there be imposed upon RONALD TATE, of Flat 1 (Basement), No. 41 Colville Gardens, London, W.11, a penalty of £25 to be forfeit to Her Majesty, and that he do pay to The Law Society the sum of £10 10s. towards the applicant's costs of and incidental to this hearing.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and, in general, full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

REQUISITIONED CROWN PROPERTY: LIABILITY FOR RENT DURING REQUISITION: WHETHER TENANT EVICTED

Commissioners of Crown Lands *v.* Page

Lord Evershed, M.R., Ormerod and Devlin, L.JJ.

2nd June, 1960

Appeal from Gorman, J.

In 1945 the Minister of Works, acting on behalf of the Crown and in exercise of powers conferred by the Defence (General) Regulations, 1939, requisitioned premises which had been demised in 1937 by the Commissioners of Crown Lands for a term of twenty-five years to the predecessor in title of Lady Una Handley Page. The premises were derequisitioned on 3rd September, 1955. The lessee paid no rent from 5th April, 1945, until 5th July, 1955, and the landlords brought proceedings claiming arrears of rent. The lessee pleaded the Limitation Act, 1939, and that defence was conceded; the claim in the action being limited accordingly. The defendant further alleged that she had been "evicted" by the requisitioning and that, accordingly, payment of rent had been suspended. Lady Handley Page died after commencement of the suit but the proceedings were carried on by her executor. Gorman, J., gave judgment for the Crown and the defendant appealed.

LORD EVERSHED, M.R., applying *Upton* v. *Townend* (1855), 17 C.B. 30, said that the intention to be attributed to the Crown in performing the executive duty involving requisition was not an intention, qua landlord, of depriving the tenant of her "enjoyment" of the premises except to the extent of requiring her to submit to the Crown's occupation as a licensee during the emergency on terms that she should be fairly compensated for the licence. Moreover, the occupation was not "wrongful," for there had been no derogation from the grant nor any breach of a covenant for quiet enjoyment. The grant, which did not contain any express covenant for quiet enjoyment, was impliedly subject to the right of the Crown to exercise its statutory powers and duties, a view which was supported by *William Cory & Sons, Ltd.* v. *City of London Corporation* [1951] 2 K.B. 476. Accordingly, there was no ground for the suspension of the obligation to pay rent.

ORMEROD and DEVLIN, L.JJ., delivered concurring judgments. Devlin, L.J., commented that the same result would have been reached even if the lease had contained the ordinary covenant by a landlord for quiet enjoyment, for such a covenant would, by necessary implication, have to be read as excluding measures affecting the nation as a whole taken by the Crown for the public good.

Appeal dismissed.

APPEARANCES: *Robin H. W. Dunn* (*Allen & Overy*); *Peter H. B. W. Foster*, Q.C., and *J. C. Leonard* (*Treasury Solicitor*).

[Reported by Miss E. DANGERFIELD, Barrister-at-Law] [3 W.L.R. 446

CLAIM FOR PENALTIES UNDER INCOME TAX ACTS: DEFENCE PLEADS NEGATIVE PREGNANT: WHETHER PLAINTIFF COMMISSIONERS ENTITLED TO PARTICULARS

Inland Revenue Commissioners *v.* Jackson

Sellers and Pearce, L.JJ. 24th June, 1960

Interlocutory appeal from Salmon, J.

The Inland Revenue Commissioners claimed penalties from a taxpayer under s. 232 of the Income Tax Act, 1952, and earlier revenue Acts, for failure to make income tax returns over a period of nine years. Their statement of claim alleged that he had been required by notices in writing on 7th October, 1958, to furnish on or before 12th November, 1958, particulars as to the several sources of his income, and that he "without reasonable excuse" had failed to do so within the time prescribed. By para. 2 of his defence the taxpayer admitted that he had not furnished all the particulars required within the time prescribed; but he specifically denied "that he failed to furnish any such particulars without reasonable excuse." The commissioners applied for particulars of that denial; and the master ordered the taxpayer to give particulars "specifying whether it is alleged that there was a reasonable excuse for not furnishing the particulars within the time and if so giving full particulars of such alleged excuse." The judge in chambers dismissed the taxpayer's appeal from that order. The taxpayer appealed.

SELLERS, L.J., said that this was a claim for penalties and not a criminal proceeding. The form of the pleading was normal so far as particulars were required of the averments in the pleading. His lordship supported the judge entirely in thinking that when the defendant pleaded as he had done in para. 2 of the defence he was of necessity and by clear implication setting up an implied affirmative. It did not go to establish the plaintiffs' case but operated substantially for the benefit of the defendant. On those pleadings the defendant proposed to set up that there was reasonable excuse for his not giving the information required. Unless the particulars of the defence which had been asked for were given before the trial there might well be surprise, delay and undue expense. The appeal should be dismissed.

PEARCE, L.J., concurring, said that the pleadings made it clear that the traverse was a negative pregnant. The admissions of counsel had made it even clearer that the defendant intended to set up an affirmative case. His only object in seeking to avoid giving the particulars was the unmeritorious one of preventing the plaintiffs knowing before the trial what his case was, and it would probably lead to an inconvenient adjournment in the middle of the hearing.

APPEARANCES: *Leonard Lewis* (*B. A. Woolf & Co.*); *Alan Orr* (*Solicitor, Inland Revenue*).

[Reported by Miss M. M. HILL, Barrister-at-Law] [1 W.L.R. 873

Chancery Division

REVENUE: COMPANY: SURTAX DIRECTION: MEANING OF "CONTROL": WHETHER "SUBSIDIARY COMPANY"

Inland Revenue Commissioners *v.* Harton Coal Co., Ltd.

Pennycuick, J. 3rd June, 1960

Appeal from the Special Commissioners for the purposes of the Income Tax Acts.

On 6th April, 1948, the issued share capital of the company consisted of a class of A ordinary shares and a class of B ordinary shares. All the shares carried one vote each except for one of the B ordinary shares, the "management share," which carried a number of votes equal to three times the total number of votes of all the other shares of both classes. The Schroder Group (Schroder) and the Stevenson Clarke, Ltd., Group (Stevenson) each owned five-twelfths of the issued shares of each class, and the remaining two-twelfths were owned by British Industrial Corporation, Ltd. (B.I.C.). The management share and one other B ordinary share were owned beneficially by Schroder and Stevenson jointly, the name of

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BEALE & CAPPS, Chartered Auctioneers, Surveyors, Valuers, 126 Ladbroke Grove, W.10. Tel. PAR 5671.

CHESTERTON & SONS, Chartered Surveyors, Auctioneers and Estate Agents, 116 Kensington High Street, W.8. Tel. Western 1234.

COLE, HICKS & CHILVERS, Surveyors, etc., Helena Chambers, 42 The Broadway, Ealing, W.5. Tel. Eal 4014/5.

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Newbury.—DREWEATT, WATSON & BARTON. Est. 1759. Chartered Auctioneers, Estate Agents and Valuers, Market Place. Tel. 1.

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CORNWALL (*continued*)

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Schroder appearing first on the register of members in respect of them. Article 78 of the articles of association of the company provided that, where there were joint registered holders, any one of them might vote as if he were solely entitled, and if more than one holder were present at a meeting the one whose name appeared first on the register should alone be entitled to vote. It was admitted that Schroder was a company to which s. 21 of the Finance Act, 1922, applied and Stevenson was not. It was disputed whether or not s. 21 applied to B.I.C. Directions were made against the company under s. 21 of the Finance Act, 1922, for the years 1948–49, 1949–50 and 1950–51. The company appealed and the special commissioners discharged the directions. The Crown appealed to the High Court.

PENNYCUICK, J., said that the sole question was whether the company was, during the relevant years, a subsidiary company within the meaning of s. 21 (6) of the Finance Act, 1922, as amended, in which case s. 21 did not apply to the company and the directions ought to be rescinded. The company must show (1) that control of the company was in the hands of Stevenson and B.I.C. by reason of their beneficial ownership of shares in it; (2) that it was not excluded from the status of a subsidiary company by s. 14 (1) of the Finance Act, 1937; and (3) that B.I.C. was not a company to which s. 21 applied. Question (1) raised three points: (*a*) was the control of the company exclusively in the hands of Schroder for the purpose of s. 21 (6) by reason of its interest in the management share? It was established that the expression "control" in relation to a company meant the power by the exercise of voting rights to carry a resolution at a general meeting of the company and that, in the absence of an indication to the contrary in the context, the persons who possessed those voting rights were to be ascertained by reference to the articles of the company and its register of members: *British American Tobacco Co., Ltd.* v. *Inland Revenue Commissioners* [1943] A.C. 335; *Inland Revenue Commissioners* v. *J. Bibby & Sons, Ltd.* [1945] W.N. 117; *Barclays Bank, Ltd.* v. *Inland Revenue Commissioners* [1959] Ch. 659. It was also established, in the absence of an indication to the contrary in the context, that where there were joint holders of a share and the articles contained a provision corresponding to art. 78 the first registered holder alone was to be taken into account in ascertaining voting rights: *Barclays Bank, Ltd.* v. *Inland Revenue Commissioners, supra.* The position was altered by the presence in s. 21 (6) of the words "by reason of the beneficial ownership of shares therein." It was impossible to say that Schroder had any beneficial interest in the management share which gave it control to the exclusion of Stevenson. Schroder had exclusive control in the sense explained above not by reason of its beneficial interest but by reason of the fact that its name was first on the register. (*b*) Was the control of the company exclusively in the hands of Schroder and Stevenson for the purpose of s. 21 (6) by reason of their joint beneficial ownership of the management share? It was clear that as beneficial owners of the management share they could together control the company. But it was also clear that Stevenson could, if it did not agree with Schroder, disenfranchise the management share and, on this footing, the votes attached to the remaining shares would alone have been effective. Therefore, the beneficial owners of the management share did not have exclusive control of the company. (*c*) Disregarding the management share, was the control of the company in Stevenson and B.I.C. by reason of their respective beneficial ownership of five-twelfths and two-twelfths of the shares? It was clear that Schroder and either Stevenson or B.I.C. could control the company. But it was equally clear that Stevenson and B.I.C. together could control the company. The requirements of s. 21 (6) were satisfied if upon any one commutation the control of the company was in the hands of two or more companies to none of which s. 21 applied. On question (2) the effect of s. 14 (1) was that a company under the control of not more than five persons was disqualified from being a subsidiary company unless it was only by the inclusion of a company to which s. 21 did not apply that the company could be brought within s. 19 (1) of the Finance Act, 1936 (which provided in what circumstances a company was to be deemed to be under the control of not more than five persons). Putting it another way, the disqualification operated if, taking into account only companies to which s. 21 did apply, the company came within s. 19 (1). There was no reference in that subsection to beneficial ownership, and such a reference could not be implied. Schroder, as the first registered holder of the management share, controlled the company alone in the ordinary sense of the word and within the terms of s. 19 (1). The company accordingly fell within the ambit of s. 19 (1) (*a*), taking into account only a company to which s. 21 applied and without having to include a company to which s. 21 did not apply, and was, therefore, excluded from being a subsidiary company. In the result the Crown succeeded and it was not necessary to consider question (3).

APPEARANCES: *Sir Frank Soskice*, Q.C., *E. Blanshard Stamp* and *Alan S. Orr* (*Solicitor, Inland Revenue*); *F. Heyworth Talbot*, Q.C., and *C. N. Beattie* (*Slaughter & May*).

[Reported by Miss V. A. MOXON, Barrister-at-Law] [3 W.L.R. 414

Queen's Bench Division

CERTIORARI: EVIDENCE WRONGLY ADMITTED: NO ERROR OF LAW ON FACE OF RECORD: ADMISSIBILITY OF AFFIDAVIT EVIDENCE

R. *v.* Agricultural Land Tribunal for the South Eastern Area; *ex parte* Bracey

Lord Parker, C.J., Byrne and Donovan, JJ. 26th May, 1960

Application for certiorari.

An agricultural land tribunal consented to the operation of a notice to quit part of an agricultural holding on the ground that greater hardship would be caused by withholding than by giving consent. In the reasons for their decision the tribunal stated that the tenant, Dacre James Bracey, had said that the possession of the disputed land was almost vital to his farming economy and that he would go to any lengths to retain it, but that he had had to admit in cross-examination that some three years before he had negotiated with his then landlord to surrender the land if he was paid £3,000, and that there had been further abortive negotiations to surrender the land just before the notice to quit was served. The tenant applied for certiorari to quash the decision of the tribunal on the ground that the negotiations were conducted without prejudice and that the tribunal had thereby taken into consideration matters which they were not entitled to take into consideration. There was nothing on the face of the order or in any part of the record to show that the negotiations were conducted without prejudice, but the tenant filed an affidavit deposing to these facts.

LORD PARKER, C.J., said that counsel for the tenant had relied very strongly on a dictum of Lord Goddard, C.J., in his judgment in *R.* v. *Fulham, Hammersmith and Kensington Rent Tribunal; ex parte Hierowski* [1953] 2 All E.R. 4, at p. 6. It was unnecessary to refer to the facts, but in that case, reported in the All England Reports, there was a passage which read as follows: "But there is another ground on which, in my opinion, the court is bound to grant certiorari. If it can be shown that an inferior tribunal has come to its decision by taking into account matters which it ought never to have taken into account and are virtually extraneous to what they have to decide, that is a ground for granting certiorari. The chairman, in his affidavit, has frankly stated that the tribunal acted as they did on grounds which appear to this court to be entirely irrelevant . . ." His lordship confessed that when he was referred to that passage with which, he, as a member of the court, had agreed, he

was worried; but he noticed that in the Law Reports, when the matter was revised, that particular passage was omitted ([1953] 2 Q.B. 147). There was a clear distinction between a tribunal which acted without jurisdiction and one which went wrong in law while acting within its jurisdiction, for example, acting on no evidence or acting on evidence which ought to have been rejected, or failing to take into consideration evidence which ought to have been considered. Those were all matters of law, and unless the error appeared on the record, no order for certiorari could be obtained. His lordship was quite satisfied that the court was not entitled to look at any affidavit evidence, in other words to go behind the record in this case and on the record he could see no error of law. Accordingly, he would refuse the application.

BYRNE and DONOVAN, JJ., agreed.

APPEARANCES: *D. A. Grant* (*Robbins, Olivey & Lake*, for *Burges, Salmon & Co.*, Bristol); *Alan Fletcher* (*Pennington and Son*, for *Lemon, Humphreys, Parker & Mather*, Swindon).

[Reported by A. D. RAWLEY, Esq., Barrister-at-Law] [1 W.L.R. 911

ROAD TRAFFIC: STATIONARY UNLIT VEHICLE ON HIGHWAY AT NIGHT: WHETHER DANGEROUS OBSTRUCTION

Parish *v.* Judd

Edmund Davies, J. 23rd June, 1960

Action.

At 10 o'clock on a dark night, while the defendant was driving his motor-car along a highway, the lighting mechanism of his car failed owing to a break in the earth wire between the battery and the cylinder head. A passing lorry driver towed the car to the side of the road some six or seven yards from a street lamp. While both vehicles were stationary, the defendant's car being completely unlit, the lorry carrying rear and side lights, a car in which the plaintiff was a passenger collided with the rear of the defendant's car and the plaintiff sustained injuries. In an action for damages for personal injuries, the plaintiff claimed that the defendant had wrongfully obstructed the highway by permitting his car to be on the highway without any lights and, alternatively, that he was negligent in permitting it to stand in such an unlit condition on the road.

EDMUND DAVIES, J., said that for an unlighted vehicle found at night on a road to constitute a nuisance it must be shown, first, not merely that the vehicle was an obstruction but that it was a danger. Secondly, it must be shown either that the vehicle became unlighted by reason of some fault on the part of the person responsible for the vehicle, or, assuming that it initially became unlighted without any fault on his part, that he was thereafter guilty of some fault. Assuming that the obstruction presented a danger, did the unlit condition of the vehicle on a dark road at night in itself raise a presumption of negligence or fault against the person responsible for the vehicle? Common sense said that the answer should be in the affirmative. His lordship was surprised to be holding for the first time, as far as any reported decision was concerned, that the presence upon a dark road at night of a wholly unlit vehicle (in circumstances where there was no street lighting) was prima facie evidence of negligence on the part of the person responsible for the vehicle, and that if the matter stopped there, negligence would remain established. Applying that to the nuisance aspect of this case, the presence on the highway of this vehicle in its unlit state would without more be a sufficient compliance with the first requirement that the vehicle should have become unlit owing to the negligence of the car owner. But the whole basis of the claim, both in negligence and in nuisance, must be the existence of danger, and he had come to the conclusion on the whole of the evidence that the plaintiff failed *in limine*. On the evidence he had come to the conclusion that the place where the vehicle was standing was a sufficiently illuminated place to present no danger to road users. Accordingly, in so far as nuisance was concerned, the action failed on the ground that there was no dangerous obstruction presented on the highway at all. Moreover, he was satisfied that the presumption of negligence would, upon the evidence, have been displaced as the defendant had shown that he had reasonably discharged his duty by maintaining his car in the manner in which a reasonably prudent owner of a vehicle could be expected to do. Accordingly the initial failure of the lights could not be attributed to any negligence on his part and therefore the plaintiff's claim failed.

APPEARANCES: *J. Bolland* (*Amery-Parkes & Co.*); *R. I. Kidwell* (*Ponsford & Devenish, Tivendale & Munday*).

[Reported by Mrs. E. M. WELLWOOD, Barrister-at-Law] [1 W.L.R. 867

DAMAGES: EXPENSES OF WIFE'S INJURIES PAID BY HUSBAND OUT OF JOINT BANK ACCOUNT: WHETHER SPECIAL DAMAGE OF WIFE

Gage and Another *v.* King

Diplock, J. 29th June, 1960

Action.

A husband and wife sustained injuries when their motor-car, driven by the husband, was in collision with a motor-car driven by the defendant. Both husband and wife sued the defendant for damages and the husband was found to be two-thirds and the defendant one-third to blame for the collision. Included in the claim for special damage were certain expenses, doctors' and nursing home fees and additional domestic help, incurred as a result of the injuries to the wife. The majority of those expenses had been paid by the husband out of a joint bank account fed by income from the husband's investments and business and interest on the wife's investments. Both spouses drew on the account for housekeeping and personal expenses but there was no evidence of any agreement between them as to the ownership of any balance standing to the credit of the account. Some of the doctors' fees were still unpaid and most of the fee notes bore the name of the wife. This report is concerned only with the claim that since they had been paid out of the joint account, the expenses incurred as a result of the wife's injuries were special damage which she was entitled to recover in full against the defendant.

DIPLOCK, J., said that the mutal rights of spouses in a joint account while the marriage was still subsisting were a different question from what was to happen to the balance when the marriage broke up. Such an arrangement between husband and wife was not meant to be attended with legal consequences (see *Balfour* v. *Balfour* [1919] 2 K.B. 571, per Atkin, L.J., at p. 578) as between the spouses while the marriage was subsisting. The wife's right to draw on the account was subject to no legal limitation and was neither increased nor diminished by the fact that the husband had drawn cheques on it for the expenses of her medical treatment, any more than it would have been if the expenses had been incurred as a result of his own injuries. The fact that the moneys came out of a joint account was irrelevant, and which of the spouses was entitled to recover them as special damage depended on which of them had incurred the legal liability to pay. In treating that as the crucial question his lordship realised that he was differing from the judgment of Paull, J., in *Schneider* v. *Eisovitch* [1960] 2 W.L.R. 169; p. 89, *ante*, but it seemed to him that that decision was contrary to the *ratio decidendi* in *Allen* v. *Waters & Co.* [1935] 1 K.B. 200. His lordship started with the proposition that the wife had implied authority to pledge her husband's credit for necessaries and all these expenses were necessaries; he was under a legal duty to provide her with them. In the absence of evidence to rebut the presumption that, in so far as she had contracted for them herself, she had done so as her husband's agent, the sole liability was incurred by him and was recoverable as special damage caused to him and not to the wife. Judgment accordingly.

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Harrow.—WARNER & CO. (T. A. Warner, F.A.L.P.A.), Surveys, Valuations, etc., Specialists in Urban Estate Management, 51 Station Road, North Harrow. Tel. Harrow 9636/7/8.

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Moor Park and Northwood.—E. BECKETT, F.A.I., Surveyor, Chartered Auctioneer and Estate Agent, MOOR PARK ESTATE OFFICE, Moor Park Station, Northwood. Tel. Northwood (NH2) 4131. And at Harrow, North Harrow and Sudbury, Wembley.

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Northwood and Pinner.—MANDLEY & SPARROW, Auctioneers, Valuers, etc., 25 Maxwell Road, Northwood. Tel. 3295/6. And branches in Hertfordshire.

Northwood and Pinner.—SWANNELL & SLY, 3 Maxwell Road, Northwood. Tel. 19. Valuers, Auctioneers, etc.

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Ruislip, Ickenham and District.—JOHN MEACOCK AND CO., 123/125 High Street, Ruislip. Tel. Ruislip 3072/3/4. And opposite the Church, Ickenham. Tel. Ruislip 5526 and 9824.

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Norwich.—ALDRIDGE & PARTNERS, 22 Surrey Street, Surveyors and Estate Agents. Tel. Norwich 28517/8.

Norwich.—CLOWES, NASH & THURGAR, Est. 1848 (H. M. Thurgar, F.A.I., R. F. Hill, F.A.L.P.A., C. M. Thurgar, A.A.I.), 6 Tombland. Tel. 27261/2.

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(*continued on p. xvii*)

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Nottingham.—WALKER, WALTON & HANSON, Chartered Surveyors and Valuers, Chartered Auctioneers and Estate Agents, Byard Lane. Est. 1841. Tel. Nottingham 54272 (7 lines).

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Whitchurch.—JOSEPH WRIGHT, Auctioneers, Valuers and Estate Agents, 15 Watergate Street, Whitchurch. Tel. 62.

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Crewkerne.—25 miles radius.—TAYLOR & CO., Auctioneers, Valuers, Surveyors, Estate Agents. Tel. 546.

Taunton and District.—C. R. MORRIS, SONS AND PEARD, Land Agents, Surveyors, Valuers, Auctioneers, 6a Hammet Street. Tel. 2546. North Curry. Tel. 319.

APPEARANCES: *P. M. O'Connor*, Q.C., and *H. B. Grant* (*Charlton Hubbard & Co.*, for *Marsh & Ferriman*, Worthing); *Martin Jukes*, Q.C., and *P. Bennet* (*Gardiner & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 460

Court of Criminal Appeal

DIMINISHED RESPONSIBILITY: "ABNORMALITY OF MIND": MATTERS FOR JURY

R. *v.* Byrne

Lord Parker, C.J., Hilbery and Diplock, JJ.
4th July, 1960

Appeal against conviction.

The appellant was charged with the murder of a young girl whom he had strangled and whose dead body he had mutilated. He admitted the facts of the killing and pleaded that he was suffering from diminished responsibility as defined by s. 2 of the Homicide Act, 1957, and was, accordingly, not guilty of murder but of manslaughter. He was found guilty of murder and appealed on the ground of a misdirection by the trial judge which amounted to a direction that difficulty or even inability of an accused person to exercise will power to control his physical acts could not amount to such abnormality of mind as substantially to impair his mental responsibility within the meaning of s. 2.

LORD PARKER, C.J., said that "abnormality of mind" in s. 2 (1) of the Homicide Act, 1957, meant a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal; it covered the mind's activities in all its aspects, not only the perception of physical acts and matters, and the ability to form a rational judgment as to whether an act was right or wrong but also the ability to exercise will power to control physical acts in accordance with that rational judgment. "Mental responsibility for his acts" pointed to a consideration of the extent to which the accused's mind was answerable for his physical acts, which had to include a consideration of the extent of his ability to exercise will power to control his physical acts. Whether the accused was at the time of the killing suffering from any "abnormality of mind" was a question for the jury on which they were entitled to take into consideration all the evidence including the acts or statements of the accused and his demeanour. They were not bound to accept the medical evidence if there was other material before them which, in their judgment, conflicted with it and outweighed it. The aetiology of the abnormality of mind did, however, seem to be a matter to be determined on expert evidence. Assuming that the jury were satisfied that the accused was suffering from "abnormality of mind" the question arose whether the abnormality was such as substantially impaired his mental responsibility for his acts in doing the killing. That was a question of degree and essentially one for the jury, on which they might quite legitimately differ from doctors. Inability to exercise will power to control physical acts, provided that it was due to abnormality of mind from one of the causes specified in the subsection, was sufficient to entitle the accused to the benefit of the section; difficulty in controlling his physical acts, depending on the degree of difficulty, might be. It was for the jury to decide on the whole of the evidence whether such inability or difficulty had, not as a matter of scientific certainty but on the balance of probabilities, been established, and in the case of difficulty whether the difficulty was so great as to amount to a substantial impairment of the accused's mental responsibility for his acts. The judge's direction thus withdrew from the jury the essential determination of fact which it was their province to decide. The medical evidence as to the appellant's ability to control his physical acts at the time of the killing was all one way. The evidence of the revolting circumstances of the killing and the subsequent mutilations, as of the appellant's previous sexual history, pointed to the conclusion that the accused was what would be described in ordinary language as on the border-line of insanity or partially insane. Properly directed, the jury could not have come to any other conclusion than that the defence under s. 2 of the Homicide Act was made out. Appeal allowed.

APPEARANCES: *R. K. Brown*, Q.C., and *John Owen* (*Registrar, Court of Criminal Appeal*); *John Hobson*, Q.C., and *Elizabeth Lane*, Q.C. (*Director of Public Prosecutions*).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] [3 W.L.R. 449

CRIMINAL LAW: PRISON BREACH: WHETHER DISCIPLINARY AWARD BY VISITING COMMITTEE PRECLUDES SUBSEQUENT CRIMINAL CHARGE

R. *v.* Hogan; R. *v.* Tompkins

Lord Parker, C.J., Cassels and Donovan, JJ.
4th July, 1960

Appeals against conviction.

Two prisoners serving sentences of preventive detention planned with another man to escape from prison. In order to escape, wire under a skylight had to be cut. The wire was cut and the three men got out through the skylight and escaped. The two prisoners having been recaptured, the governor of the prison reported them for an offence against discipline under r. 42 (13) of the Prison Rules, 1949, to the visiting committee of justices, and pursuant to r. 44 the justices determined upon the report and made a number of awards forfeiting privileges against the men. Both men were later tried and convicted on an indictment charging them, *inter alia*, with prison breach. They appealed against those convictions for that offence on the ground that, having already been dealt with by the visiting committee for simple escape, they could not subsequently be charged with prison breach since it was a charge of the same offence of escape in an aggravated form.

LORD PARKER, C.J., said that it was true, as could be seen from *R.* v. *Miles* (1890), 24 Q.B.D. 423, that if a man had been convicted already, albeit for a different offence, a charge could not be brought against him subsequently for the same offence in an aggravated form if both cases arose on exactly the same matter, unless the consequences had changed (see *R.* v. *Thomas* [1950] 1 K.B. 26). But the principle in *R.* v. *Miles* applied only to decisions of courts of competent jurisdiction. It so happened that the offence created under r. 42 (13) of the Prison Rules, an offence against discipline, was in fact the same as the common-law offence of simple escape, but the visiting committee had dealt with it as an offence against discipline under the rules and had not dealt with the common-law escape. That the appellants had already been dealt with by the visiting committee was for the judge to take into account when passing sentence, but it was quite another thing to say that a prisoner, having been found guilty of an offence against discipline under r. 42 (13), could not then be charged with the common-law offence of escape in its aggravated form as prison breach. He clearly could be. The truth of the matter was that the visiting committee were dealing with matters of internal discipline with which the court was in no way concerned. Appeals dismissed.

APPEARANCES: *R. H. S. Palmer* (*Registrar, Court of Criminal Appeal*); *M. G. Polson* (*John Robinson & Jarvis*, Newport, Isle of Wight).

[Reported by Miss J. F. LAMB, Barrister-at-Law] [3 W.L.R. 426

WEEKLY LAW REPORTS: REFERENCES

The following references can now be given in respect of notes of cases published in these columns on 5th August, 1960:—

Benjamin and Another v. *Minister of Pensions and National Insurance*	3 W.L.R. 430
Lincoln v. *Daniels*	1 W.L.R. 852
Pearce v. *Pearce*	1 W.L.R. 855

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

QUESTIONS

OFFICES ACT, 1960

The LORD CHANCELLOR said that consideration had been given to the question of introducing comprehensive legislation as regards the health, welfare and safety of persons employed in shops, offices and other premises covered by the Gowers Committee's Report. It had been decided to introduce comprehensive legislation on this subject, for which the Minister of Labour would be responsible. It would not be possible to complete the preparation of this major measure in time to introduce it next session; but it was intended that the Bill should be introduced before the Offices Bill came into force at the beginning of 1962. The legislation would, in any event, cover shops, offices and those railway premises not already covered by factory legislation. The question of the inclusion of other classes of premises covered by the Gowers Committee's Report was still being examined.

[28th July.

HOUSE OF COMMONS

QUESTIONS

THE FARTHING

The ECONOMIC SECRETARY TO THE TREASURY said that it seemed clear that the farthing had outlived its usefulness. Accordingly it was proposed that a Royal Proclamation be issued under s. 11 of the Coinage Act, 1870, by which farthings would no longer be legal tender as from 1st January, 1961. Until that date it would be open to anyone who possessed farthings to change them at a bank for coins of a higher denomination.

[29th July.

BUILDING SOCIETIES (INVESTMENT OF FUNDS)

The ECONOMIC SECRETARY TO THE TREASURY announced that it was the intention of the Chief Registrar that the regulations to be made in due course under s. 11 of the Building Societies Act, 1960, governing the investment of funds which are not immediately required for its purposes should have the following effect:—

1. Building societies would be authorised to invest funds without restriction in (i) Tax Reserve Certificates; (ii) Defence Bonds; (iii) Treasury Bills and Northern Ireland Government Bills; (iv) Local Authority Bills; (v) Local authorities' unsecured deposits at not more than seven days' notice; (vi) Marketable securities (i.e., securities quoted on a recognised stock exchange in the United Kingdom) bearing a fixed rate of interest and the terms of issue of which provide that the nominal capital value must be repaid at par or above not later than five years from date of purchase of the security by the society and which (*a*) are either issued by or guaranteed as to capital and interest by the United Kingdom Government or Government of Northern Ireland; (*b*) are either issued by or guaranteed as to capital and interest by a Commonwealth Government; (*c*) are issued by a local authority in the United Kingdom; (*d*) are issued by a public authority (e.g., nationalised industry, water undertaking) in the United Kingdom; (*e*) are issued in London by the International Bank for Reconstruction and Development; (vii) Local authority loans secured by way of mortgage and the terms of which provide for repayment either not more than six months from the date of investment or at not more than six months' notice.

2. At any time when the book value of a society's holdings of investments set out in para. 1 exceeds 7½ per cent. of the total assets of the society at the end of the society's previous financial year, any further investments may also be made in (i) Marketable securities as defined in para. 1 (vi) but subject to a period to maturity of fifteen years instead of five years; (ii) Local authority mortgages, the terms of which provide for repayment at par or above not later than two years from the date of the investment.

3. At any time when the book value of a building society's holdings of investments listed in para. 1 alone exceed 7½ per cent. of the total assets of the society at the end of the previous financial year, and, at the same time, the total book value of the society's investments as listed in paras. 1 and 2 together exceed 15 per cent. of the said assets, any further investments may also be made in (i) Marketable securities defined as in para. 1 (vi) above, but subject to a period of maturity of twenty-five years instead of five years; (ii) Local authority mortgages, the terms of which provide for repayment at par or above not later than five years from the date of investment.

Under the terms of s. 11 cash in hand or cash with a bank or savings bank was outside the scope of these provisions. It was intended that these provisions should operate from 1st January, 1961. Under the terms of the Act existing investments would be outside the provisions of the order and might continue to be held until they were redeemed or converted.

[29th July.

STATUTORY INSTRUMENTS

Acquisition of Land (Rate of Interest on Entry) Regulations, 1960. (S.I. 1960 No. 1311.) 5d. See p. 628, *ante*.

Acquisition of Land (Rate of Interest on Entry) (Scotland) Regulations, 1960. (S.I. 1960 No. 1312.) 5d.

Argyll County Council (Allt Nan Cailleach, Strontian) Water Order, 1960. (S.I. 1960 No. 1266 (S. 64).) 5d.

British Transport Commission (Horsted Keynes and Sheffield Park) Light Railway (Leasing and Transfer) Order, 1960. (S.I. 1960 No. 1304.) 5d.

Cinematograph Films (Exhibitors) Regulations, 1960. (S.I. 1960 No. 1338.) 8d.

Civil Aviation (Air Registration Board) Order, 1960. (S.I. 1960 No. 1321.) 5d.

Civil Aviation (Licensing) Act (Commencement) Order, 1960. (S.I. 1960 No. 1287 (C. 12).) 4d.

Cotton Finishing (Woven Cloth) Reorganisation Scheme (Confirmation) Order, 1960. (S.I. 1960 No. 1264.) 8d.

Cotton Finishing (Yarn Processing) Reorganisation Scheme (Confirmation) Order, 1960. (S.I. 1960 No. 1265.) 8d.

County Borough of Brighton (Dyke Road Drive) Bridge Order, 1960. (S.I. 1960 No. 1326.) 5d.

County Court (Amendment) Rules, 1960. (S.I. 1960 No. 1275 (*L.* 14).) 8d. See p. 684, *post*.

County Court Districts (Seaham and Parish of Norton Mandeville) Order, 1960. (S.I. 1960 No. 1249.) 5d. See p. 641, *ante*.

County of Inverness (Loch Dhughaill, Tarskavaig, Skye) Water Order, 1960. (S.I. 1960 No. 1267 (S. 65).) 5d.

Criminal Appeal Rules, 1960. (S.I. 1960 No. 1260 (L. 10).) 11d.

[Rule 12 of, and the Schedule to, these rules replace the existing forms set out in the Schedule to the Criminal Appeal Rules, 1908. The other rules make minor amendments to the Criminal Appeal Rules, 1908, and in particular rr. 10 and 11 modify the rules in relation to an appeal from an order made under Pt. V of the Mental Health Act, 1959.]

Gwynedd River Board (Afon Ganol Internal Drainage District) Order, 1960. (S.I. 1960 No. 1269.) 5d.

Her Majesty's Forces (Civil Employment) (Revocation) Rules, 1960. (S.I. 1960 No. 1271.) 4d.

Import Duties (Temporary Exemptions) (No. 7) Order, 1960. (S.I. 1960 No. 1336.) 4d.

London Traffic (Prescribed Routes) (City of St. Albans) Regulations, 1960. (S.I. 1960 No. 1281.) 4d.

London Traffic (Prescribed Routes) (Wandsworth) Regulations, 1960. (S.I. 1960 No. 1303.) 4d.

Matrimonial Causes (Amendment) (No. 2) Rules, 1960. (S.I. 1960 No. 1261 (L. 11).) 5d.

[These rules make amendments in the Matrimonial Causes Rules, 1957, consequential on the coming into operation of the Mental Health Act, 1959.]

Meat (Staining and Sterilization) Regulations, 1960. (S.I. 1960 No. 1268.) 6d.

Mechanical Lighters Regulations, 1960. (S.I. 1960 No. 1350.) 5d.

Mental Health (Registration and Inspection of Mental Nursing Homes) Regulations, 1960. (S.I. 1960 No. 1272.) 5d.

Motor Vehicles (Authorisation of Special Types) (Amendment) (No. 2) Order, 1960. (S.I. 1960 No. 1295.) 4d.

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Croydon and District.—JOHN P. DICKINS & SONS, Surveyors, Valuers and Estate Agents. Est. 1882. 2 and 4 George Street, Croydon. CROydon 3128/9/30.

Croydon and London.—HAROLD WILLIAMS AND PARTNERS, Chartered Surveyors, Valuers, Chartered Auctioneers and Estate Agents, 80 High Street, Croydon. Tel. Croydon 1931. And at Temple Chambers, Temple Avenue, E.C.4. Tel. Ludgate Circus 9288.

Croydon and Epsom.—ROBT. W. FULLER, MOON AND FULLER, Chartered Surveyors, Valuers and Auctioneers, 85 High Street, Croydon (CRO 3124/6), and at Epsom (communications to Croydon Office). Established 1824.

Croydon and Sutton.—SAINT, SYMINGTON AND STEDMAN, Surveyors, Auctioneers and Valuers, 106 High Street, Croydon. Tel. CRO 2216/7. And at 6 Cheam Road, Sutton. Tel. VIG 7616/7.

Dorking.—ARNOLD & SON, Auctioneers & Surveyors, 171 High Street and branches. Est. 1855. Tel. 2201/2.

Dorking.—WHITE & SONS, 104 High Street. Agricultural and General Surveyors and Valuers. Tel. 3255.

Dorking & London.—PEARSON, COLE & SHORLAND, Auction and Estate Offices, Dorking. Tel. 3897/8. Surveyors, Valuers and Auctioneers; and at 2 Hans Road, S.W.3. Tel. Kensington 0066.

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Dorking and Reigate.—A. R. & J. GASCOIGNE-PEES, F.A.L.P.A., Auctioneers, Estate Agents and Surveyors, 258/260 High Street, Dorking. Tel. 4071/2. 6 Church Street, Reigate. Tel. 4422/3. And at Leatherhead and Epsom.

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SURREY (*continued*)

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Farnham.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, 4 Castle Street. Tel. 5274 (2 lines).

Farnham.—CUBITT & WEST. Tel. Farnham 5261. Valuers, Surveyors, Estate Agents.

Farnham.—EGGAR & CO., incorporating Curtis & Watson, Surveyors, Auctioneers, Land & Estate Agents, 74 Castle Street. Tel. 6221/3. And at Alton and Basingstoke, Hants.

Farnham.—GERMAN, ADDY & CO. (Est. 1903). Chartered Auctioneers and Estate Agents, Surveyors and Valuers, 111 West Street. Tel. 5283/4.

Farnham.—WHITEHEAD & WHITEHEAD, smal. HEWETT & LEE, 32 South Street. (Tel. 6277).

Godalming.—H. B. BAVERSTOCK & SON, Chartered Auctioneers and Estate Agents, Estate Offices. Tel. 1722 (5 lines).

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Guildford.—MESSENGER, MORGAN & MAY, Chartered Surveyors, 8 Quarry Street. Tel. 2992/4.

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Haslemere and Hindhead.—CUBITT & WEST. Tel. Haslemere 2345/6/7, Hindhead 63. Valuers, Surveyors, Estate Agents.

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(*continued on p. xviii*)

SURREY (*continued*)

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Brighton.—MELLOR & MELLOR, Chartered Auctioneers and Estate Agents, 110 St. James's Street. Tel. 682910.

Brighton.—H. D. S. STILES & CO., F.R.I.C.S., F.A.I. (special rating diploma), 6 Pavilion Buildings. Tel. Brighton 23244 (4 lines). 10 King's Bench Walk, Temple E.C.4. Tel. Central 5356. 3 The Steyne, Worthing. Tel. Worthing 9192/3.

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Crawley.—JOHN CHURCHMAN & SONS, Chartered Surveyors, Valuers and Land Agents. Tel. Crawley 1899.

Crawley.—WM. WOOD, SON & GARDNER, Surveyors and Valuers. Tel. Crawley, 1.

Crowborough.—DONALD BEALE & CO., Auctioneers, Surveyors and Valuers. The Broadway. Tel. Crowborough 3333.

Eastbourne.—FRANK H. BUDD, LTD., Auctioneers, Surveyors, Valuers, 1 Bolton Road. Tel. 1860.

Eastbourne.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 12 Gildredge Road. Tel. Eastbourne 1285.

Eastbourne.—HEFFORD & HOLMES, F.A.I., Chartered Auctioneers and Estate Agents, 51 Gildredge Road. Tel. Eastbourne 7840.

Eastbourne.—OAKDEN & CO., Estate Agents, Auctioneers and Valuers, 24 Cornfield Road. Est. 1897 Tel. 1234/5.

Eastbourne and District.—FARNHAM & CO., Auctioneers, Estate Agents and Valuers, 6 Terminus Road, Eastbourne. Tel. 4433/4/5. Branch at 87 Eastbourne Road, Lower Willingdon, and 4 Grand Parade, Polegate.

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East Grinstead.—TURNER, RUDGE & TURNER, Chartered Surveyors. Tel. East Grinstead 700/1.

Hassocks and Mid-Sussex.—AYLING & STRUDWICK, Chartered Surveyors. Tel. Hassocks 882/3.

Hastings, St. Leonards and East Sussex.—DYER & OVERTON (H. B. Dyer, D.S.O., F.R.I.C.S., F.A.I.; F. R. Hynard, F.R.I.C.S.). Consultant Chartered Surveyors. Estd. 1892. 6-7 Havelock Road, Hastings. Tel. 5661 (3 lines).

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Worthing.—A. C. DRAYCOTT, Chartered Auctioneers and Estate Agents, 8-14 South Street, Lancing, Sussex. Tel. Lancing 2828.

Worthing.—EYDMANN, STREET & BRIDGE (Est. 1864), 14 Chapel Road. Tel. 4060.

Worthing.—HAWKER & CO., Chartered Surveyors, Chapel Road, Worthing. Tel. Worthing 1136 and 1137.

Worthing.—PATCHING & CO., Est. over a century. Tel. 5000. 5 Chapel Road.

Worthing.—JOHN D. SYMONDS & CO., Chartered Surveyors, Revenue Buildings, Chapel Road. Tel. Worthing 623/4.

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Leamington Spa and District.—TRUSLOVE & HARRIS, Auctioneers, Valuers, Surveyors. Head Office: 38/40 Warwick Street, Leamington Spa. Tel. 1861 (2 lines).

Rugby and District.—WIGGINS & RUSSELL, Auctioneers, etc., 14 Regent Place, Rugby (Tel. 2548).

Sutton Coldfield.—QUANTRILL SMITH & CO., 4 and 6 High Street. Tel. SUT 4481 (5 lines).

WESTMORLAND

Kendal.—MICHAEL C. L. HODGSON, Auctioneers and Valuers, 10a Highgate. Tel. 1375.

Windermere.—PROCTER & BIRKBECK (Est. 1841), Auctioneers, Lake Road. Tel. 688.

WILTSHIRE

Bath and District and Surrounding Counties.—COWARD, JAMES & CO., incorporating FORTT, HATT & BILLINGS (Est. 1903), Surveyors, Auctioneers and Estate Agents, Special Probate Department, New Bond Street Chambers. 14 New Bond Street, Bath. Tel. Bath 3150, 3584, 4268 and 61360.

Marlborough Area (Wilts, Berks and Hants Borders).—JOHN GERMAN & SON (Est. 1840), Land Agents, Surveyors, Auctioneers and Valuers, Estate Offices, Ramsbury, Nr. Marlborough. Tel. Ramsbury 361/2. And at Ashby-de-la-Zouch, Burton-on-Trent and Derby.

WORCESTERSHIRE

Kidderminster.—CATTELL & YOUNG, 31 Worcester Street. Tel. 3075 and 3077. And also at Droitwich Spa and Tenbury Wells.

Worcester.—BENTLEY, HOBBS & MYTTON, F.A.I., Chartered Auctioneers, etc., 49 Foregate Street, Tel. 5194/5.

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Scarborough.—EDWARD HARLAND & SONS, 4 Aberdeen Walk, Scarborough. Tel. 834.

Sheffield.—HENRY SPENCER & SONS, Auctioneers, 4 Paradise Street, Sheffield. Tel. 25206. And at 20 The Square, Retford, Notts. Tel. 531/2. And 91 Bridge Street, Worksop. Tel. 2654.

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Cardiff.—JNO. OLIVER WATKINS & FRANCIS, Chartered Auctioneers, Chartered Surveyors, 11 Dumfries Place. Tel. 33489/90.

Swansea.—E. NOEL HUSBANDS, F.A.I., 139 Walter Road. Tel. 57801.

Swansea.—ASTLEY SAMUEL, LEEDER & SON (Est. 1863), Chartered Surveyors, Estate Agents and Auctioneers, 49 Mansel Street, Swansea. Tel. 55891 (4 lines).

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Denbighshire and Flintshire.—HARPER WEBB & CO., (incorporating W. H. Nightingale & Son), Chartered Surveyors, 35 White Friars, Chester. Tel. 20685.

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National Assistance (Registration of Homes) (Amendment) Regulations, 1960. (S.I. 1960 No. 1273.) 5d.
National Health Service (General Medical and Pharmaceutical Services) Amendment Regulations, 1960. (S.I. 1960 No. 1274.) 5d.
National Insurance (Contributions) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1285.) 5d.
National Insurance (General Benefit) Amendment Regulations, 1960. (S.I. 1960 No. 1282.) 6d.
National Insurance (Hospital In-Patients) Amendment Regulations, 1960. (S.I. 1960 No. 1283.) 6d.
National Insurance (Industrial Injuries) (Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1284.) 5d.
Draft National Insurance (Married Women) Amendment Regulations, 1960. 5d.
National Insurance (Modification of the Superannuation Acts) Regulations, 1960. (S.I. 1960 No. 1270.) 5d.
National Insurance (Unemployment and Sickness Benefit) Amendment (No. 2) Regulations, 1960. (S.I. 1960 No. 1286.) 5d.
Newport (Monmouthshire) Corporation Water Order, 1960. (S.I. 1960 No. 1253.) 6d.
Nuclear Installations Regulations, 1960. (S.I. 1960 No. 1255.) 5d.
Opencast Coal (Annual Value and Other Land) (Variation) (No. 2) Regulations, 1960. (S.I. 1960 No. 1248.) 5d.
Parking Places (Extension outside London No. 2) Order, 1960. (S.I. 1960 No. 1302.) 4d.
Permits, Spirits Consignment Notes and Stock Books Regulations, 1960. (S.I. 1960 No. 1349.) 5d.
Police (Overseas Service) (Nyasaland) Regulations, 1960. (S.I. 1960 No. 1299.) 5d.
Premium Savings Bonds (Amendment) Regulations, 1960. (S.I. 1960 No. 1306.) 5d.
Retention of Cables, Mains and Pipe under Highways (County of Lancaster) (No. 1) Order, 1960. (S.I. 1960 No. 1316.) 5d.
Retention of Main under Highway (County of York, West Riding) (No. 1) Order, 1960. (S.I. 1960 No. 1317.) 5d.
Rules of the Supreme Court (No. 2), 1960. (S.I. 1960 No. 1262 (L. 12).) 5d. See p. 648, *post.*
Rules of the Supreme Court (No. 3), 1960. (S.I. 1960 No. 1263 (L. 13).) 11d. See p. 648, *post.*
Stopping up of Highways Orders, 1960:—
County of Durham (No. 17). (S.I. 1960 No. 1309.) 5d.
Eglinton, County of Londonderry (Northern Ireland). (S.I. 1960 No. 1237.) 5d.
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White Fish Subsidy (United Kingdom) Scheme, 1960. (S.I. 1960 No. 1298.) 8d.
Work in Compressed Air (Amendment) Regulations, 1960. (S.I. 1960 No. 1307.) 4d.

SELECTED APPOINTED DAYS

July
26th — Civil Aviation (Licensing) Act, 1960, ss. 1 (1), 5, 8, 10, 11 and 12.
28th — National Insurance (Graduated Contributions and Non-participating Employments—Miscellaneous Provisions) Regulations, 1960. (S.I. 1960 No. 1210.)
29th — London Traffic (50 m.p.h. Speed Limit) (No. 2) Regulations, 1960. (S.I. 1960 No. 1198.)
Wages Regulation (Stamped or Pressed Metal-Wares) Order, 1960. (S.I. 1960 No. 1189.)
30th — Acquisition of Land (Rate of Interest on Entry) Regulations, 1960. (S.I. 1960 No. 1311.)

August
1st — Factories Act, 1960, s. 18.
National Insurance (Pensions, Existing Contributors) (Transitional) Amendment Regulations, 1960. (S.I. 1960 No. 1226.)
Premium Savings Bonds (Amendment) Regulations, 1960. (S.I. 1960 No. 1306.) 5d.
Trustee Savings Banks (Special Investments) (Limits) Order, 1960. (S.I. 1960 No. 1322.)
Washing Facilities (Running Water) Exemption Regulations, 1960. (S.I. 1960 No. 1029.)
2nd — Game Laws (Amendment) Act, 1960.
3rd — Road Traffic Act, 1956, s. 4 (3), (4) and (5); in s. 4 (6) the words from the beginning to "subs. (3) of this section"; and Sched. VIII, para. 34 (6).
4th — Traffic Signs (Speed Limits) (England and Wales) Directions, 1960. (S.I. 1960 No. 1125.)
Traffic Signs (Speed Limits) Regulations, 1960. (S.I. 1960 No. 1124.)
10th — County Court (Amendment) Rules, 1960, rr. 11 (1), (2), (3), 12 (1). (S.I. 1960 No. 1275 (L. 14).)
15th — Civil Aviation (Air Registration Board) Order, 1960. (S.I. 1960 No. 1321.)

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all

Mortgage of Property Obtained by Deed of Gift

Q. We are acting for a client who acquired property from his father by a deed of gift dated 18th June, 1958. Our client is now about to obtain an overdraft from his bank and subsequently to mortgage the property to a building society; we act both for the bank and the society. We have carefully considered s. 38 of the Finance Act, 1957, and it seems clear that in the event of our client selling the property and the donor dying, any charge for estate duty will attach only to the proceeds of sale and not to the property in the hands of the purchaser. We cannot, however, satisfy ourselves as to what the position of the bank and the building society will be. Presumably the question turns on the possibility of the donor dying within five years and the lenders having to exercise their power of sale. In that event, is it considered that a charge for estate duty would attach to the property and be payable out of the mortgagees' proceeds of sale? If so, would it take priority to the lenders' claim for the money lent or not? In general, how should a mortgagee in such circumstances be affected?

A. If the donor dies within five years and before the property has been sold the property will be deemed to pass and will be charged with estate duty. The mortgagees, however, will be bona fide purchasers for value and the better view seems to be (see Hanson's Death Duties, 10th ed., paras. 841 and 842 and Third Supplement), that since the mortgagees became such before the death of the donor they will be protected by the proviso to the Finance Act, 1894, s. 9 (1). If the donor dies within five years and after the property has been sold the proceeds of sale will be deemed to pass and will be charged with estate duty. By then those proceeds of sale, or such part of them as is necessary for the purpose, will have been applied in discharging the mortgage debt. Again, therefore, the mortgagees will be protected as bona fide purchasers for value.

NOTES AND NEWS

EXPEDITING EXCHANGE OF CONTRACTS

We understand that discussions are being held between The Law Society, the Royal Institution of Chartered Surveyors, the Chartered Land Agents' Society, the Chartered Auctioneers' and Estate Agents' Institute and the Incorporated Society of Auctioneers and Landed Property Agents to find ways of reducing the time lag between the acceptance of an offer which is subject to contract, and the exchange of binding contracts.

NEW SUPREME COURT RULES

The Rules of the Supreme Court (No. 2), 1960 (S.I. 1960 No. 1262), which come into operation on 1st October, 1960, add London County 5 per cent. Stock, 1980–83, to the list of securities in which money in court may be invested (r. 1); simplify and expedite the procedure on an application to the High Court under the Mines (Working Facilities and Support) Act, 1923 (r. 2), and amend the Supreme Court Costs Rules, 1959, in relation to the taxation of the costs of a plaintiff who is a person under disability and the costs payable to a trustee or personal representative out of the trust fund or estate.

The Rules of the Supreme Court (No. 3), 1960 (S.I. 1960 No. 1263), become operative on 1st November, 1960. Their main purpose is to effect amendments to the Rules of the Supreme Court required as a result of the Mental Health Act, 1959. A new order 16B brings together the special provisions relating to persons under disability which are at present contained in a number of different orders. Changes of substance made are that an order appointing a guardian ad litem of a patient will not usually be necessary except in probate actions (r. 3 (2)); an order for interrogatories and for discovery of documents may be made against a patient and his next friend or guardian ad litem (r. 9); and a representative of a plaintiff under disability in a probate action will in future be known as his next friend.

COUNTY COURT RULES AMENDED

The County Court (Amendment) Rules, 1960 (S.I. 1960 No. 1275), make amendments to the County Court Rules, 1936, as amended, consequential on the coming into operation of the Mental Health Act, 1959. A number of miscellaneous amendments are also made and these include: (1) The rule that a defendant who satisfies the plaintiff's claim and the fixed costs on the summons within eight days of service is not liable for any further costs, unless the court otherwise orders, is extended so as to apply whether or not he denies liability: it is made clear that the rule does not apply where the plaintiff is a person under disability (r. 8); (2) the registrar, as well as the judge, is given power under Ord. 16, rr. 1 (1) and (4), to transfer proceedings from one county court to another (r. 11); (3) the registrar is given power to grant a temporary stay of a warrant of execution issued by another court until an application can be made to the judge (r. 12); (4) where proceedings are transferred to another court for the issue of a judgment summons, any application for a new trial must be made to the court which originally gave judgment (r. 12); (5) proceedings under the Guardianship of Infants Acts, 1886 and 1925, and the Marriage Act, 1949, are to be heard in chambers, and an infant applying for consent to marry need not have a next friend, unless the court otherwise orders (r. 14); and (6) the cost of a search in any public register will be allowable under scales 2, 3 and 4 of the scales of costs (r. 41). Rules 11 (1), (2), (3) and 12 (1) come into operation on 10th August, 1960, and all the remaining rules on 1st November, 1960.

BUILDING SOCIETIES

HOUSE PURCHASE AND HOUSING ACT, 1959

The Victory Building Society and the Tyldesley Building Society have been designated for the purposes of s. 1 of the House Purchase and Housing Act, 1959.

Obituary

Mr. WILFRID CLARKSON MATHEWS, solicitor, of Birmingham, died on 25th July, aged 80. Admitted in 1905, Mr. Mathews was chairman of the Birmingham Law Society from 1920 to 1927 and the president of the society in 1934.

Mr. JOSEPH PEATFIELD, retired solicitor and notary public, of Southport and London, died on 2nd August, aged 85. He was admitted in 1907.

Mr. JAMES SMITH, solicitor, of Worcester, died on 30th July, aged 43. He was admitted in 1940, having formerly been a barrister of Gray's Inn.

Wills and Bequests

Mr. GEORGE BEVAN PICKERING, solicitor, of Redditch, left £35,520 net.

CASES REPORTED IN VOL. 104

1st July to 12th August, 1960

For cases reported up to and including 24th June, see Interim Index

"THE SOLICITORS' JOURNAL"

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Classified Advertisements must be received by first post Wednesday.

★ Classified Advertisements ★

PUBLIC NOTICES

METROPOLITAN BOROUGH OF BATTERSEA

ASSISTANT SOLICITOR

Salary within range £1,110–£1,265 (A.P.T. IV) at a point according to experience. Local government experience not essential. Canteen facilities and five-day working in three out of four weeks. Applications by 5th September to Town Clerk, Municipal Buildings, Lavender Hill, S.W.11, giving names of two referees.

FLINTSHIRE COUNTY COUNCIL

Applications invited for appointment as ASSISTANT SOLICITOR in the Department of the Clerk of the Peace and of the County Council. Salary £1,065–£1,220, at a commencing salary according to experience. Previous local government service not essential. Application form and further particulars from the undersigned. Closing date 22nd August, 1960.

W. HUGH JONES,
Clerk of the County Council.

County Buildings,
Mold,
Flintshire.

MIDDLESEX COUNTY COUNCIL

UNADMITTED LEGAL ASSISTANT with experience required on A.P.T. I. Good prospects. Commencing salary, related to experience, not less than £610 plus London Weighting £40 (if 26 years), £25 (21–25 years). Five-day week. Pensionable. Prescribed conditions. Written applications with two referees to The Clerk of the County Council (Ref. C), Middlesex Guildhall, S.W.1, by 26th August. (Quote E.80 S.J.)

WEDNESFIELD URBAN DISTRICT COUNCIL

(Population 30,500 Esd.)

Appointment of Deputy Solicitor and Clerk of the Council. Salary £1,243 rising by three annual increments to £1,373. Housing accommodation available if required. Superannuation, 21 working days per annum, alternative Saturdays.

Wednesfield is developing fast. Unusual opportunities for those wishing experience at an early age in the office of Deputy, though applicants qualified late in life will be well considered.

For those under 50 there is no fear of redundancy.

Applications giving information as to age, Articles, Date of Admission, positions held, to be sent, together with names and addresses of two referees to the undersigned.

J. HENWOOD JONES,
Clerk of the Council.

Council Offices,
Wednesfield,
Staffs.

BOROUGH OF RAWTENSTALL

UNADMITTED LEGAL ASSISTANT

Applications are invited for the above appointment at a salary of £880 per annum. Previous Local Government experience is not necessary but good practical experience in conveyancing is essential.

HOUSING ACCOMMODATION WILL BE PROVIDED IN APPROPRIATE CASES.

Applications stating age, education, experience, present and previous positions, together with the names of two referees, should reach the undersigned not later than the 22nd August, 1960.

COLIN CAMPBELL,
Town Clerk.

Town Hall,
Rawtenstall,
Lancashire.

THE LAW SOCIETY'S SCHOOL OF LAW

EXPERIENCED LECTURER

A vacancy exists at The Law Society's School of Law in London for an Experienced Lecturer. An attractive salary will be paid dependent on age and qualifications.

A Superannuation and Life Assurance Cover Scheme are in operation.

Detailed applications should be addressed to The Secretary, The Law Society, The Law Society's Hall, Chancery Lane, London, W.C.2.

COUNTY BOROUGH OF DONCASTER

ASSISTANT SOLICITOR

Applications are invited for the above appointment at a salary within the Special Grade, £835–£1,165, the point of entry being according to experience. The person appointed will be required to assist with the conduct of prosecutions on behalf of the Police and the Corporation and to assist generally in the work of my office. Previous local government experience not essential. Law Society June Finalists will be considered.

The appointment is superannuable, subject to medical examination and is determinable by one month's notice.

Applications with details of age, qualifications, date of admission, experience and the names of two referees must reach me by 29th August, 1960.

Canvassing will disqualify, and applicants must state whether they are related to any member or Senior Officer of the Council.

H. R. WORMALD,
Town Clerk.

1 Priory Place,
Doncaster.

CITY OF BIRMINGHAM

SENIOR ASSISTANT SOLICITOR
(COMMON LAW)

Applications are invited for the appointment of Senior Assistant Solicitor, salary scale " G " £1,990–£2,280 per annum. Candidates should have, in addition to general Local Government experience, a good knowledge of Common Law, High Court, County Court and Magisterial practice.

Post pensionable. Medical examination.

Applications accompanied by copies of not more than three testimonials should be delivered to me by the 9th September, 1960.

Canvassing disqualifies.

T. H. PARKINSON,
Town Clerk.

The Council House,
Birmingham, 1.
August, 1960.

MANCHESTER CORPORATION

TOWN CLERK'S DEPARTMENT

Applications are invited from solicitors, preferably with some local government experience, but this is not essential, for the post of ASSISTANT SOLICITOR. Salary Grade A.P.T. IV (£1,065–£1,220 per annum). Particulars of age, education, experience and the names of two referees should be sent to the Town Clerk, Town Hall, Manchester, 2, by 29th August, 1960.

NORTH RIDING COUNTY COUNCIL

Require male LAW CLERK with experience in a Solicitor's office or the legal department of a local authority, mainly for conveyancing; must be proficient typist, shorthand an advantage; salary £765 × £30 to £855. Post superannuable. Applications, with details of experience and names of two referees, to the Clerk of the County Council, County Hall, Northallerton, by 20th August, 1960.

WREXHAM RURAL DISTRICT COUNCIL

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the above appointment in my Office at a salary within the Special Grade, namely, £835–£1,165 per annum, the commencing point on the Scale depending on experience and qualifications. Previous Local Government experience is not essential and newly admitted Solicitors and June Finalists may apply.

The Council is one of the largest Rural Authorities in England and Wales and the successful candidate will receive wide experience in the administration of the Housing, Planning and Public Health Acts and in the other work of a progressive Local Authority including Committee work.

The appointment will be subject to the Local Government Superannuation Acts and the Scheme of Conditions of Service and may be determined by one month's notice in writing on either side. The successful candidate will be required to pass a medical examination. The Council will be prepared to assist in the provision of housing accommodation if required.

Applications stating age, qualifications and experience and containing the names and addresses of two referees must be delivered to the undersigned not later than the 29th August, 1960.

Canvassing either directly or indirectly will be a disqualification and relationship to any member or senior officer of the Council must be disclosed.

TREVOR L. WILLIAMS,
Clerk and Solicitor.

Imperial Buildings,
Regent Street,
Wrexham.

8th August, 1960.

BOROUGH OF KETTERING

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the post of Assistant Solicitor in the Town Clerk's Department at a salary in accordance with the Special Grade for Assistant Solicitors (£835–£1,165 per annum). Applications will be considered from June Finalists. The post affords an opportunity of gaining wide and varied experience on both the legal and administrative sides.

Housing accommodation will be available if required.

The appointment will be subject to the National Scheme of Conditions of Service and the Local Government Superannuation Acts.

Applications stating age, qualifications and experience, together with the names of two referees, should reach the undersigned not later than the 27th August, 1960.

D. DUNSFORD PRICE,
Town Clerk.

Council Offices,
Huxloe Place,
Kettering.

CITY OF LEEDS

CONVEYANCING ASSISTANT

Applications are invited for this permanent appointment from experienced Conveyancers. Salary according to experience and qualifications within range of £765–£880. Previous Local Government experience is not essential.

Applications stating age, education, experience previous appointments held, together with names of two referees, should be sent to the Town Clerk, Civic Hall, Leeds, 1, before the 26th August, 1960.

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CLASSIFIED ADVERTISEMENTS—*continued from p. xix*

PUBLIC NOTICES—*continued*

CITY AND COUNTY OF THE CITY OF LINCOLN

APPOINTMENT OF SENIOR ASSISTANT SOLICITOR

Applications are invited for this appointment at a salary to be fixed, according to experience, within A.P.T. Grade V (£1,220 x £55 (1) x £50 (2)–£1,375) of the National Salary Scales. Applicants must possess good experience in conveyancing and advocacy and some local government experience is essential. Town planning experience will be an advantage.

The post is superannuable and the successful candidate will be required to pass a medical examination. Housing accommodation is available.

Further particulars of the appointment may be obtained from me, and applications stating age, qualifications, experience and the names and addresses of three persons to whom reference can be made must reach me not later than 29th August, 1960.

Canvassing directly or indirectly will disqualify.

J. HARPER SMITH,
Town Clerk.

Town Clerk's Office,
Lincoln.
6th August, 1960.

NEW SCOTLAND YARD

ASSISTANT PROSECUTING SOLICITOR on permanent staff of Solicitor's Department. Age 24–40. Salary (men) on appointment £845–£1,050 according to age; on confirmation £1,180 at age 30, rising to £1,610. Non-contributory pension. Candidates who have passed their final examination but have not yet been admitted will be considered. Particulars from Secretary, Room 165 (LA), New Scotland Yard, S.W.1.

(AMENDED ADVERTISEMENT)

BOROUGH OF LEIGH

APPOINTMENT OF ASSISTANT SOLICITOR

There is a vacancy for an Assistant Solicitor in my office at a salary within Grades IV and V of the A.P. & T. Division (£1,065 to £1,375), the point of entry being according to experience.

The appointment, which is on the permanent staff of the Corporation, is superannuable and will be determinable by two months' notice on either side.

The tenancy of a modern detached house situate in a pleasant residential area will be available to the successful applicant.

Applications stating age, particulars of experience and specifying the names of two persons to whom reference may be made, must be delivered to the undersigned not later than Monday, the 15th August, 1960.

ALBERT JONES,
Town Clerk.

Town Hall,
Leigh.

BOROUGH OF ENFIELD

APPOINTMENT OF ASSISTANT SOLICITOR

Applications are invited for the post of :—

Assistant Solicitor—within the A.P.T. Division Grade V, including London weighting (£1,265—£1,420) according to experience.

Opportunity to gain wide and varied experience in large non-county borough. Population 110,000.

Applications, stating age, particulars of experience and specifying names of two referees should be sent to me as soon as possible.

CYRIL E. C. R. PLATTEN,
Town Clerk.

Public Offices,
Gentleman's Row,
Enfield,
Middlesex.
July, 1960.

BOROUGH OF MAIDSTONE

ASSISTANT SOLICITOR

Applications are invited for this appointment at a salary in accordance with A.P.T. Grade IV (£1,065 to £1,220).

Local Government experience desirable but not essential.

Housing accommodation available.

Applications stating age, qualifications and experience and naming two referees to me by Friday, 2nd September, 1960.

T. SCHOLES,
Town Clerk.

13 Tonbridge Road,
Maidstone.

APPOINTMENTS VACANT

LEADING City Solicitors require conveyancing solicitor of outstanding ability and experience. Remuneration will be commensurate.—Write Box 322, Reynells, 44 Chancery Lane, W.C.2.

LARGE City Solicitors have vacancy for young Conveyancing Solicitor. Recent admission no disadvantage but must be above average ability. Scope for considerable advancement.—Write Box 321, Reynells, 44 Chancery Lane, W.C.2.

SENIOR probate and trust clerk required by leading City Solicitors. Must be capable of handling large volume of work under a specialist Partner and preferably with City or Lincoln's Inn experience. Excellent prospects for one seeking advancement with increased salary (minimum £1,200) and greater responsibility.—Write with full details to Box 6888, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOUTH CHESHIRE.—Vacancy for young or recently qualified Solicitor with some knowledge of County Court work. Salaried partnership will be offered after probationary period.—Box 6889, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Managing Clerk—Conveyancing and probate—required by established West End firm after holidays. Excellent prospects for keen, self-reliant and knowledgeable man or woman seeking advancement. No Saturdays. Salary according to services offered. Write in confidence with details.—Box 6770, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WANTED in London.—Young qualified Solicitor or Accountant (age around 25) as Assistant to Director of large Public Company whose business is development in property, television, film production and general entertainment. Salary not less than £1,000 p.a.—Box 6890, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PRESTON, LANCASHIRE.—Expanding firm of Solicitors require qualified assistant under the age of 28 with a view to partnership.—Box 6891, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PRESTON, LANCASHIRE.—Assistant Solicitor required. Newly qualified man considered. Prospects of partnership.—Box 6892, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NOTTINGHAM.—An able and energetic solicitor, age 30/40 years, with experience of company and commercial law is required as a partner in a progressive and busy firm. Capital of up to £5,000 desirable. Excellent prospects. Reply with brief particulars—Box 6893, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LONDON solicitors, S.W.1, require Conveyancing Clerk to work with little or no supervision. 9.30–5.30, no Saturdays. Permanent position to suitably experienced applicant. Salary by arrangement.—Box 6894, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

MID WALES SPA. Managing Clerk wanted.—Box 6774, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST END Solicitors require experienced Conveyancer capable of commanding a salary of £1,500 upwards. 5-day week. Holiday arrangements respected.—Full particulars, Box 6895, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM.—Assistant solicitor required for Conveyancing, Probate and Trust work. Prospects of partnership for suitable applicant. Experienced unadmitted managing clerk would be considered.—Apply Box 6896, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EXPERIENCED Common Law Clerk required for busy Manchester Solicitors principally dealing with Insurance, Motor and Factory Act Claims. Good salary and prospects.—Box 6897, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SURREY Solicitors practising in Borough of Sutton & Cheam have vacancy for Unadmitted Clerk (male or female) having not less than five years' practical experience in general work but particularly Conveyancing and Probate. Excellent opportunities and prospects for one anxious to progress and who aspires eventually to a position of responsibility involving the control of matters subject only to guidance on points of an unusual nature or of difficulty.—Box 6600, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR or BARRISTER

as Assistant Company Secretary

An outstanding opportunity in modern West London headquarters of international company for a young solicitor or barrister versed in company law. University graduate preferred.

In addition to normal company secretarial responsibilities, he will have special responsibility for pension arrangements, property negotiations, insurance and patent arrangements.

For a man aged about 30, with preferably five years' relevant experience in industry, this opportunity offers exceptional prospects in a fast-growing company which dominates the automation industry.

Starting salary up to £1,500, depending on experience. Excellent working conditions, pension arrangements, etc. Applicants should write briefly—age, experience, qualifications, present salary—to M. C. Dunlop,

HONEYWELL CONTROLS LIMITED

RUISLIP ROAD EAST, GREENFORD, MIDDLESEX.

SOLICITORS require assistant to litigation managing clerk. General experience with opportunity to interview clients and increase knowledge. Good salary. South London.—Box 6762, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PETERBOROUGH.—Unadmitted litigation managing clerk (male or female) required. Salary according to age and experience with increments according to scale. Superannuation scheme available.—Box 6898, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

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CLASSIFIED ADVERTISEMENTS—*continued from p. xx*

APPOINTMENTS VACANT—*continued*

PETERBOROUGH.—Assistant Solicitor required primarily to assist in common law and advocacy. Good experience for young solicitor preferably with two to five years' experience. Good salary with increments according to scale. Superannuation available. —Box 6899, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Clerk, male or female, required for pleasant new Croydon offices of City Solicitors. Good salary to right applicant.—Box 6900, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR, Middle Temple, urgently requires temporary assistance for a few months from experienced Conveyancer (preferably with some knowledge litigation). Salary £1,250–£1,500 p.a. according to experience. Alternatively would consider young solicitor practising locally able to give part-time assistance.—Box 6902, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

BIRMINGHAM Solicitors City centre require young admitted solicitor for busy practice, mainly conveyancing and probate, opportunity for gaining valuable experience, apply giving details of experience, age and salary required.—Box 6904, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SHEFFIELD.—Young assistant solicitor (with some experience since admission) required to undertake conveyancing, probate and general work; no advocacy; interest in commercial matters welcomed; salary by arrangement.—Box 6905, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NORTH CHESHIRE Solicitors require young Solicitor with good general experience particularly in Probate and Trusts. Good salary offered. Prospects of Partnership to suitable man.—Box 6906, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

WEST SURREY solicitors in large Provincial town require immediately recently admitted man as an assistant to a partner. Please write with brief details of experience, age and salary required.—Box 6907, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR required for City solicitors new offices in Croydon. Congenial position. General experience required including preferably some advocacy. Salary up to about £1,500.—Box 6901, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

CASHIER/BOOKKEEPER required by Holborn Solicitors; sole charge firm's books, salaries and P.A.Y.E. Income Tax experience. 9.30—5.30. No Saturdays.—Telephone Holborn 2090, or apply Box 6872, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LITIGATION Clerk to assist Managing Clerk. Good salary and excellent prospects in pleasant offices near Westminster.—Box 6880, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

A PROBATE Clerk, admitted or unadmitted, with some knowledge of Conveyancing required by London Solicitors for their Kingston office. Excellent prospects for the right man and good salary.—Box 6881, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor required as assistant to senior partner. Able to work in general matters without supervision or with slight supervision. Five-day week. Salary by arrangement.—Write stating age and experience, Marcan & Dean, 20 Victoria Street, S.W.1.

YOUNG Solicitor required to assist busy partner in old-established practice in London and Kingston. Partnership offered after probationary period and good salary.—Box 6879, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

EAST BERKSHIRE.—Conveyancing Managing Clerk urgently wanted. Salary by arrangement. Pension Scheme if required.—Box 6882, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

LICHFIELD Solicitors require young Solicitor for General Practice. Salary according to age and experience.—Apply Box 6865, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

OXFORDSHIRE Solicitors in congenial country town urgently require assistant capable of handling mainly conveyancing but some general work; good prospects including partnership for suitable man.—Box 6871, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

ASSISTANT Solicitor recently qualified wanted for old-established general practice in Barnsley; willing to undertake advocacy. —Box 6396, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane E.C.4

CITY Solicitors require unadmitted Probate Clerk.—Write giving particulars with age, experience and salary required, to Box 6350, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

APPOINTMENTS WANTED

YOUNG LAWYER, 33, member New York Bar, three years' experience with leading New York firm, English background, B.A. (law) Cantab., seeks legal position United Kingdom where Anglo-American qualifications peculiarly useful. Available interviews England October–November.—Box 6903, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SOLICITOR offers a sort of "Fire Brigade" service to any firm confronted with a temporary crisis, unexpectedly overworked, or where staff depleted for any reason. Sorting out messes a speciality. Fees moderate.—Box 6909, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

SPECIALIST (qualified) in patents conveyancing, licences and commercial agreements available to assist privately in this connection. —Box 6908, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

RETIRED Solicitor would be glad to undertake part-time Conveyancing work in London or Southern Counties.—Box 6910, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PROPERTY INVESTMENTS

INVESTMENTS REQUIRED

ACTIVE enquiries in hand for good-class shop investments, blocks of flats, freehold ground rents and weekly investments of all types.—Details in confidence to Cowdrey, Phipps & Hollis, F.A.L.P.A., Investment Department, 360 Neasden Lane, London, N.W.10. (Dollis Hill 6671–5).

BARR & MEAD require for Investors reasonably modern houses, flats or shops, preferably Southern England or Midlands. Units from £20,000 to £100,000. Quick decisions.—Barr & Mead, 2 High Street, Pinner, Middlesex. Also at South Harrow, Harrow and Ruislip.

BUILDING LAND WANTED

LAND WANTED for housing. Home Counties. 2/50 acres. Agents retained and reinstructed. Planning applications and appeals undertaken.—TRUE BOND HOMES, LTD., 342 Richmond Road, East Twickenham. (POP 6231).

PRACTICES AND PARTNERSHIPS

ISLE OF WIGHT.—Solicitor desires to dispose of major portion of his share in well-established conveyancing and probate practice in attractive district. Moderate terms. Experienced practitioner between 40–45 preferred. Strict confidence given and required.—Box 6869, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

PREMISES, OFFICES, ETC.

PORTLAND PLACE, W.1.

Important Period Office Property. Suitable for Institutional or Professional use. Area 13,000 sq. ft. Modernized throughout. Also two maisonettes and garaging. Rent £10,500 p.a. excl.

CHAMBERLAIN & WILLOWS,
23 Moorgate, E.C.2 (MET 8001).

MORTGAGE FUNDS

2ND MORTGAGES our speciality. Cranbrook Mortgage Bureau, 49 Cranbrook Road, Ilford, Essex.

WE offer a specialised service re mortgage advances on Shop Properties, Factories and Houses over £10,000. Sums also available for Building and Industrial development.—MILLER SMITH AND PARTNERS, 139 Park Lane, W.1. Tel.: MAYfair 7081–4.

MORTGAGE FUNDS REQUIRED

PRIVATE and Trust Funds for mortgages required for clients on all classes of investment property; minimum advance £3,000. Interest 7½ per cent.—Write T. C. March, 6 Bell Yard, W.C.2.

WELL-KNOWN LONDON PROPERTY COMPANY

REQUIRE

1st MORTGAGES

SMALL OR LARGE ESTATES
MODERN HOUSES

(Let to controlled tenants)

NEW OFFICE BLOCK
(WEST END)

Short or long term. Quick redemptions. Procuration fee paid. Directors' Guarantees.

Write Managing Director
Box 6887, Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, E.C.4.

NAMEPLATES

NAMEPLATES in bronze, brass and plastic; quotations and full size layout sent free; signwriting a speciality.—Please send wording to Abbey Craftsmen, Ltd., Abbey Works, 109A Old Street, London, E.C.1. Tel.: CLE 3845.

NAMEPLATES in bronze, brass or plastics; Rubber Stamps; sketches and estimates free.—Austin Luce & Company, 19 College Road, Harrow, Middlesex. Tel.: Harrow 3839.

PROCESS SERVING

WITTEN & CO.
322 HIGH HOLBORN, W.C.1
Tel.: CHA 7509–3878
PROCESS SERVING
AND DIVORCE ENQUIRIES

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CLASSIFIED ADVERTISEMENTS—*continued from p. xxi*

INVESTMENTS WANTED

INVESTMENTS especially weekly residentials required for Trust Fund. Strict confidence observed. Greenwold, Alterman & Co., 2 Southampton Place, W.C.1.

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TRADE VALUATIONS
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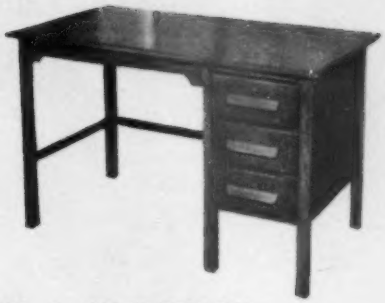

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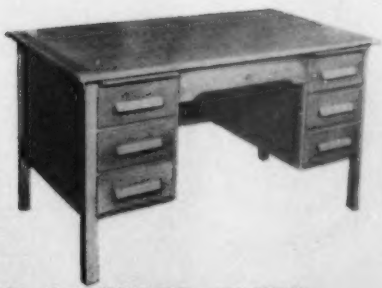

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